



DISRUPTING THE STATUS QUO

BASIC INCOME
FOR PEOPLE WITH DISABILITIES

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ABSTRACT

This paper explores how a basic income (BI) program for people with disabilities¹ could affirm the ideals outlined in the Canadian *Charter of Rights and Freedoms*, the Ontario *Human Rights Code* and the *UN Convention on the Rights of Persons with Disabilities*. A BI can provide its recipients with an increased level of human dignity, autonomy and inclusion when compared with the current model of social assistance in Ontario. Theories of equality and social justice will be explored to demonstrate the ways in which a BI could provide greater well-being for people with disabilities. A range of judicial decisions will be reviewed. The opinions expressed in these selected court cases bolster the establishment of a BI program in Ontario. Expert testimony and dissenting opinions show that the *Charter* may obligate a ‘duty to act’ to promote a basic standard of living which a BI could provide for people with disabilities.

SUMMARY

This paper will examine how a BI program would support social justice for people with disabilities receiving social assistance. This paper will evaluate the merits of a BI program for people with disabilities in comparison to the current delivery model of social

¹ This paper will use person first language describing people with disabilities rather than disabled people. One reason for this is because someone’s impairment is only one part of them. Person first language is more appropriate and respectful because it recognizes individuality and uniqueness. For the purposes of this paper, people are defined as disabled “when they have physical or mental differences or impairments while living in a society where their bodies and ways of thinking, communicating, sensing, or moving are not treated as “normal” or “natural.” Impairment will be defined as “difficulty doing something that most other people can do easily. Impairment may lead to disability (such as paraplegia), but does not necessarily (such as nearsightedness) “Autistic Hoya: Definitions,” Accessed July 13, 2018. <https://www.autistichoya.com/p/definitions.html>

assistance. It will point out lessons have been learned from past pilots and how theories of equality and social justice could be applied in the development of a BI program for people with disabilities, and how past judicial decisions would support a BI policy in Ontario.

A change in the delivery of social assistance is required to improve the lives of people with disabilities. A BI program designed for people with disabilities could be modeled after the past pilot projects. Because a well-designed BI program has ‘no strings attached’, such a program would provide uniform payments to all, but would allow individuals the freedom and liberty to self-determine how to allocate their allowance to promote their own participation within their society. It would also allow them to earn income in addition to the allowance they receive from the BI in a way that is discouraged with current social assistance programs.²

There is a risk in a BI program of an emphasis being placed on formal equality being implemented over equality of outcome.³ In order for a BI program to benefit people with

² A supported independent living model also enables people with disabilities to live in a supportive yet independent environment. Each person can live with a roommate and have an individualized plan which is meant to foster personal independence. Often people living in this situation have the ability, or the ability to learn, how to make meals and manage money with some support. Much like a BI program this model of community living allows for increased personal autonomy and provides someone the opportunity to participate within their community. “Community Living Toronto: Residential Options.” Accessed September 17, 2018 <https://www.cltoronto.ca/supports-and-services/residential-options/>

³ M.H. Rioux, “On Second Thought: Constructing Knowledge, Law, Disability and Inequality,” In S. Herr, L. Gostin and H. Koh, *The Human Rights of Persons with Intellectual Disabilities: Different But Equal*. (Oxford: University Press, 2004.) 287-317.

disabilities, the concept of substantive equality needs to be well integrated into the design of the program. A BI program needs to embody substantive equality, specifically equality of outcome, so that people with disabilities end up better off.

Johan Galtung's concept of 'Structural Violence', first developed in his 1969 essay 'Violence, Peace, and Peace Research', is a useful concept to investigate how economic, legal and government structures, such as the Ontario Disabilities Support Program (ODSP) enact 'structural' violence towards people with disabilities because they are a more vulnerable group.⁴ Structural violence does not harm any one person, but groups of people with shared identities.⁵ For example, people who do not work because if they do they could risk losing their government benefits and/or their earned income would be clawed back at a prohibitive rate are victims of an unequal power relationship built into ODSP which currently impacts the connection between the state and people with disabilities receiving social services.⁶ The implementation of a BI program would see these power structures dismantled because the recipients themselves would have the liberty to determine how to allocate their own resources and funds.

⁴ Johan Galtung, "Violence, Peace, and Peace Research." *Journal of Peace Research* Vol. 6, No. 3 (1969): 167-191.

⁵ Linda Sheryl Greene, "Before and After Michael Brown—Toward an End to Structural and Actual Violence." *Washington University Journal of Law & Policy*, Vol 49 (2015): 22

⁶ "ODSP Information Sheet," *Ontario.ca*, Accessed July 25, 2018.
https://www.mcass.gov.on.ca/en/mcass/programs/social/odsp/info_sheets/index.aspx

International, national and provincial laws could support the implementation of a BI program for Ontario. The current social assistance policies and practices, which impact and define the daily lives of disabled Canadians today, struggle to uphold the principles of human dignity outlined in the United Nations Declaration the *Convention on the Rights of People with Disabilities* (CRPD). The CRPD outlines the entitlements of people with disabilities. Specifically, Article 28 could be relied on as supporting a BI model.⁷

The Canadian legal system could be used to draw support for a BI model if justices interpreted the rights outlined in the *Canadian Charter of Rights and Freedoms (Charter)* as positive rights, rather than negative rights. This paper identifies a possible trend in the dissenting opinions of justices to recognize and uphold positive rights. In a future case, this may impact how social and economic rights are recognized, respected, and administered.

The inclusion of social condition in the *Charter* and/or the *Code*, would protect a BI program. This addition to the *Charter* and the *Code* would enable people with disabilities, who overall experience a higher rate of poverty,⁸ an effectual and efficient

⁷ Articles 4,5,19, 22, 25, 27, could also support a BI program. “Convention for the Rights of People with Disabilities – Articles, *UN*, Accessed August 22, 2018.
<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

⁸ “Poverty Trends 2017,” Accessed July 27, 2018.
<https://www.cpj.ca/sites/default/files/docs/files/PovertyTrendsReport2017.pdf> 2

option to obtain justice if a component of the policy or access to a BI model was in jeopardy.

INTRODUCTION

Thomas Paine, a philosophical leader in the American and French Revolutions, argued that “the wealth of society is the result of collective efforts over generations and that everybody should receive an equal social dividend as a right of citizenship.”⁹ Today, people are still asking if a life free from poverty is a citizenship right or a privilege reserved for those who are the most ‘economically productive’ citizens.

The purpose of this paper is to examine ways of providing social services to people with disabilities in order to uphold their human rights. Social assistance should be universal because it could be considered a human right. This essay will examine from a legal perspective why Ontario should support a BI model for people with disabilities.¹⁰ A BI program modeled after the four dimensions of transformative equality outlined by Sandra Fredman could redress disadvantage and champion human rights.¹¹ The four dimensions

⁹ G. Standing, “Universal Basic Income Is Our Best Weapon Against The Rising Far Right,” *Huffington Post*, January 6 2017. <https://www.huffingtonpost.com>

¹⁰ The two main forms of a basic income discussed in this paper are a universal basic income defined as a non-taxable monthly allowance which would be increasingly clawed back when income passes a certain level, and a negative income tax which involves setting a level of support, say the poverty line or a percentage of the poverty line. It would then top up anyone, or any household (on a monthly basis), who has income below that level as reported in their tax filing to reach the predetermined level.

Hugh Segal, “An Executive Summary,” *Finding A Better Way: An Income Pilot Project for Ontario - A discussion paper with Hugh D Segal*. Accessed July 28, 2018

https://files.ontario.ca/mcss_basic_income_discussion_paper_exec_summary_english.pdf 8

¹¹ S. Fredman, “Achieving Transformative Equality for Persons with Disabilities: Submission to the CRPD Committee for General Comment No.6 on Article 5 of the UN Convention on the Rights of Persons with

are: redress disadvantage, redress stigma and stereotyping, foster an environment of participation and accommodate for difference. Most significantly, the principle of transformative equality supports the placement of positive duties on the state to uphold entitlements.¹² The inclusion of all people can only be accomplished when we are willing to adjust the rules of the game where justice and transformative equality demand it.¹³

I will critically examine the merits and drawbacks of BI policies and the recent experience of pilot programs. This paper will study past *Canadian Charter of Rights and Freedoms (Charter)*¹⁴ and Ontario's *Human Rights Code*¹⁵ cases and will demonstrate, using critical legal theory, how the social and economic rights of people with disabilities have often been ignored by the courts in Canada. Recent cases centred on access to social assistance have not yielded the desired result and the route to justice has been too cumbersome. I will outline how our court systems have not embraced positive and negative rights, nor have they protected the social and economic rights of people with disabilities. I will explain how a BI program would be better at upholding the ideals of substantive and transformative equality to defend the rights of people with disabilities guaranteed by the *Charter* and *Code*, and to meet our obligations under the CRPD.

Disabilities" *Oxford Human Rights Hub*. Accessed July 13, 2018. [tps://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/.../CPRD-Submission-1.pdf](https://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/.../CPRD-Submission-1.pdf)

¹² J E Goldschmidt, "New Perspectives on Equality: Towards Transformative Justice through the Disability Convention?" *Nordic Journal of Human Rights* 35, no 1 (2017): 5.

<https://www.tandfonline.com/doi/full/10.1080/18918131.2017.1286131> 5

¹³ *Ibid*

¹⁴ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11

¹⁵ *Human Rights Code*, ROS 1990, [*the Code*]

Adding social condition to the *Charter* or the *Code* as grounds for discrimination may better protect people with disabilities. I will then conclude that a basic income is the best option to protect the integrity as well as the social and economic rights of people with disabilities.

A BI program would result in a re-ordering of societal values and the way in which individuals value themselves. The right to social assistance which provides an adequate standard of living would become a common-sense principle of our society. Proponents claim that it would be transformative, by improving access to education, reducing health-care costs, and by removing intrusive welfare bureaucracy and scrutiny.¹⁶

Providing a basic income to people with disabilities would disrupt the status quo of ODSP. This action, which will be described in greater detail later on in this paper, could be considered disruptive innovation because such a program overhaul would abolish established normative practices and replace them with a new system. A basic income for people with disabilities has never before been implemented on a large scale.

¹⁶ Lowrey, Annie. "Smart Money: Why The World Should Embrace a Universal Basic Income." *The Globe and Mail*. July 13 2018.
https://www.theglobeandmail.com/opinion/article-smart-money-why-the-world-should-embrace-universal-basic-income/?utm_source=Shared+Article+Sent+to+User&utm_medium=E-mail:+Newsletters+/-E-Blasts+/-etc.&utm_campaign=Shared+Web+Article+Links

METHODOLOGY

A mixed methods methodology was utilized when gathering research for this paper.¹⁷

This allows for both qualitative and quantitative data and information. When researching, reviewing and reading potential sources, critical theory (including critical legal theory) was utilized to understand Ontario's social assistance framework. Critical theory is a valuable perspective in the context of this MRP because it exposes the ideological assumptions at the root of socio-economic and legal practices and has the capacity to lead to new concepts and ideas for socio-economic policy and jurisprudence.¹⁸

BASIC INCOME AND PEOPLE WITH DISABILITIES

In 1834, the *Poor Law Amendment Act*¹⁹ was passed by the English Parliament. This Act intended to reduce the cost of looking after the poor and stopped money going to poor people unless they were deemed 'worthy'. Only the disabled, elderly and sick were entitled to public funds. Able-bodied men and women living in poverty were not and they were forced into workhouses which were in terrible condition. Poverty was viewed as a personal failing. The English Poor Laws provided economic and social rationalization for who was considered worthy or unworthy of public support.²⁰

¹⁷ J Creswell, *Research Design: Qualitative, Quantitative, And Mixed Methods Approaches*, 3rd Edition. (Los Angeles: Sage, 2004). 217.

¹⁸ Stephen Bronner, *Critical Theory: A Very Short Introduction* (Oxford: Oxford University Press, 2011) 100-101.

¹⁹ 4&5 Will. 4c. 76

²⁰ Marcia Rioux, and Ezra Zubrow, "Social Disability and the Public Good," In *The Market Or the Public Domain? Global Governance and the Asymmetry of Power*, edited by Daniel Drache, 155. (New York: Routledge, 2001).

This same rationale is the basis of the welfare model in Canada. Similarities can be drawn between the English Poor Laws and Canada's current neoliberal welfare system because only those who are deemed worthy receive support. Others who do not meet the particular program criteria are ineligible for support.

A BI program is the opposite of the system envisioned in the *Poor Law Amendment Act of 1834*, because it would provide everyone, regardless of need, a base subsistence. The welfare model in place today provides the 'worthy poor' with a social safety net, although 4.9 million people in Canada still live in poverty.²¹ A BI program would lift everyone out of poverty. Eligibility would not be dependent on proving one's worthiness; instead, it would be a right of living in Canada.

In 1997, Ontario Premier Mike Harris cut support to people with disabilities by 22%.²² The *General Welfare Assistance Act*²³ legislation was replaced and the current neoliberal programs, the Ontario Disability Support Program (ODSP) and Ontario Works (OW), were adopted.²⁴ The current assistance programs have strict eligibility requirements which leave many people with disabilities without the support they need to meet their

²¹ "Just the Facts," *Canada without Poverty*, Accessed July 27, 2018. <http://www.cwp-csp.ca/poverty/just-the-facts/>

²² Amanda Glasbeek, *Moral Regulation and the Governance in Canada: History Context and Critical Issues*. (Toronto, ON: Canadian Scholars Press, 2006), 337

²³ General Welfare Assistance Act, RSO 1990, c G6

²⁴ Amanda Glasbeek, *Moral Regulation and the Governance in Canada: History Context and Critical Issues*. 337

needs.²⁵ In a similar move in 2018, Ontario's Basic Income Pilot was cut by the newly elected government without consultation with the 4000 recipients from three separate communities who were enrolled in the program.²⁶

Similar to the effect of the English Poor Laws, the economic logic of austerity caused the "dividing, sorting and classifying of bodies into distinct classes of the deserving and undeserving."²⁷ This has had detrimental effects for people with disabilities who receive social support from the state. The environment of the workforce has been affected by the socio-economic concept of neoliberalism. Low wage, non-contract jobs perpetuate precarious, unstable employment. Consequently, 51% of people living in poverty are part of the Canadian workforce.²⁸ One of the most vulnerable groups is people with disabilities.

People with disabilities face significantly more barriers, both figuratively and literally, than those who do not have a disability. Obstacles can be tangible such as, for example, for those who are blind or deaf. Barriers can also be attitudinal based on stereotypes and

²⁵ Michael Mendelson, Ken Battle, Sherri Torjman and Ernie Lightman. "A Basic Income Plan for Canadians with Severe Disabilities." *Caledon Institute of Social Policy*. November 2010, Accessed July 27, 2018. <http://www.cdonline.ca/en/socialpolicy/poverty-citizenship/income-security-reform/basic-income-plan-for-canadians-with-severe-disabilities> 8

²⁶ Bill Curry and Rachel Younglai, "Federal Government urged to save Ontario's Basic Income Pilot Project," *The Globe and Mail*. August 1 2018. www.globeandmail.com

²⁷ Karen, Soldatic, and Helen Meekosha, "Disability and Neoliberal State Formation," In *Handbook of Disability Studies*, edited by N. Watson, A. Roulstone, C, Thomas & Ebrary – 209-220, (New York: Routledge, 2001), 200

²⁸ "Poverty Trends 2017," 2

stigmas which can limit their opportunities. Even the most educated, capable, determined and persistent person with a disability may be impeded by these obstacles. The barriers in non-inclusive environments (which are not addressed within society) often leave them few, if any, options for employment. As a result, according to a report from Stats Can (2012) the employment rate for disabled Canadians was 49% compared to 79% for the general population²⁹ and the median income for people with disabilities is almost half of the median income of those without disabilities. Overall, 23% of disabled Canadians live below the poverty line³⁰ compared to 15% of the non-disabled population. Many face exceptional financial hardship due to their disability. Disability and poor health often comes with substantial costs for health services, equipment and assistance that most able-bodied people do not incur. Until the state has removed all systematic and institutional barriers to employment, the state must support those who, through no fault of their own, cannot support themselves.³¹

Welfareization Of Disability Income: The lingering belief that people with disabilities must remain part of the residual ‘worthy poor’ for moral and ethical reasons is why

²⁹“A Profile of Persons with Disabilities among Canadians aged 15 years,” *Statistics Canada* or older, 2012, Accessed July 20 2018. <http://www.statcan.gc.ca/pub/89-654-x/89-654-x2015001-eng.htm> FIX

³⁰ Statistics Canada has defined the poverty line for a single person household to be \$22,133 which is half the median income for Canadians, “A Profile of Persons with Disabilities among Canadians aged 15 years,” *Statistics Canada*, Accessed July 20 2018. <http://www.statcan.gc.ca/pub/89-654-x/89-654-x2015001-eng.htm>

³¹ As of 2008, the Federal and provincial governments were losing between \$10 and \$13 billion dollars annually because of the social costs of poverty. Hugh Segal, “Finding A Better Way: An Income Pilot Project for Ontario.” *A discussion paper with Hugh D Segal*. Accessed July 28, 2018 <https://www.ontario.ca/page/finding-better-way-basic-income-pilot-project-ontario>

.”17

programs like the ODSP exist, however, the program is currently designed in a way that perpetuates poverty and dependence. The number of people receiving ODSP and remaining on ODSP has been steadily increasing. Policy analyst John Stapleton defines the disproportional growth of ODSP as the ‘welfareization’ of disability income.³² One of the reasons for the increased ‘welfareization’ of disability incomes is because ODSP and other support programs were not designed to integrate people with disabilities into the workforce but instead to perpetuate dependence by leaving recipients to remain living in poverty. ODSP has proven to be a “tangled safety net... a complicated, rule-burdened system that is hard to understand and often punitive and inconsistent in its treatment of recipients.”³³ Furthermore, the low asset limits make it nearly impossible for recipients to save money while on ODSP. Any money which is earned is clawed back at a prohibitive rate. A BI program could be designed to have a higher base allowance, so the claw back would not have such a significant impact. On Ontario Works (OW) and ODSP, recipients who wish to work also risk losing drug and medical device coverage if they earn too much in any one month. Only those with less costly impairments have any hope of transitioning out of the program.³⁴ One option to address this problem is to increase the monthly allowance asset limits and decrease claw back rates for ODSP recipients. While this might be successful at lifting some out of poverty, it would be a

³² John Stapleton, “Welfarization of Disability Incomes in Ontario,” *Metcalf Foundation*. Accessed July 13 2018. <https://metcalffoundation.com/>

³³ Michael Mendelson, Ken Battle, Sherri Torjman and Ernie Lightman, “A Basic Income Plan for Canadians with Severe Disabilities,” 9

³⁴ V Chouinard and V. Crooks, “Because they have all the power and I have none’: State restructuring of income and employment supports and disabled women’s lives in Ontario, *Disability & Society* 20(1) (2005): 19-21

Band-Aid solution for a bullet wound because the real issue is not the allowances but the design of the program.

Income Levels on OW And ODSP: Currently in Ontario, someone who is enrolled in OW receives \$8,510 a year. This is 59% below the poverty line which is calculated to be \$20,811 for a single person. The current rate is not a livable wage, yet 158,000 people were receiving OW as of February 2016.³⁵ OW is designed to be a temporary safety net and recipients are encouraged to transfer out of the program as quickly as possible and to gain full employment. It is not intended to be a long-term solution to poverty.

The ODSP financial assistance payments to people with disabilities are significantly larger than OW payments. The ODSP caseload is over 353,000³⁶ which is considerably greater than OW's case load and OW has a decreasing case load while ODSP has an increasing case load year over year.³⁷ The main reason for this is that OW supports individuals who do not qualify for ODSP while they look for employment. The absence of impairment makes these clients more likely to be employed. There is no incentive to stay on OW; by contrast, the current structure of ODSP increases dependency.

³⁵ Laurie Monsebraaten, "Ontario's Soaring Poverty Gap 'Starkest' For Single Adults As Welfare Rates Stagnate," *The Toronto Star*, May 9, 2016, <https://www.thestar.com>

³⁶ "Social Assistance Trends: ODSP," *Ontario.ca* Accessed September 16 2018, https://www.mcass.gov.on.ca/en/mcass/open/sa/trends/odsp_trends.aspx

³⁷ "Social Assistance Trends: OW," *Ontario.ca* Accessed September 16 2018, https://www.mcass.gov.on.ca/en/mcass/open/sa/trends/ow_trends.aspx

Eligibility for ODSP is determined by a caseworker. With the exception of special benefits such as health and dietary benefits, individuals on ODSP receive approximately \$1,151 per month and couples receive \$1,688 to cover the cost of their basic needs and shelter costs.³⁸ The shelter rate is currently \$489 a month³⁹ which does not come close to covering the cost of a bachelor apartment in many markets most clearly in Toronto.

Generally, if the applicant's medical and living costs are higher than their income and their non-exempt assets are equal to or less than \$40,000 a single person (or \$50,000 as a couple) they would be eligible for ODSP support. In order to become eligible for ODSP, many disabled individuals have to spend all their savings. This limits their opportunity to exit the program because they do not have enough earnings to cover their living expenses.

Currently, if an ODSP recipient earns more than \$200 a month, 50% of those earnings will be deducted from their benefits.⁴⁰ Income is based on household earnings rather than individual earnings, therefore, if a recipient's partner earns more than \$200 a month, half of those earnings can be clawed back by the government. The work-related benefit is only an incentive for people earning an insignificant salary. For most, as their wage increases, their entitlements will be reduced to zero.⁴¹

³⁸ Michelle McQuigget, "Ontario relaxes rules on support, medical coverage for people with disabilities" *The Toronto Star*. September 1 2017, <https://www.thestar.com/news/canada/2017/09/01/ontario-relaxes-rules-on-support-medical-coverage-for-people-with-disabilities.html>

³⁹ *Ibid*

⁴⁰ "ODSP Information Sheet"

⁴¹ "What Stops us From Working." *CAMH*. Accessed July 23 2018.

https://www.camh.ca/en/hospital/about_camh/influencing_public_policy/Documents/ODSP%20Report%20final.pdf

The number of people with disabilities receiving ODSP has increased as it will continue to do as the population ages. The combined cost of operation for OW and ODSP in 2015 was \$8.5 billion.⁴² Social assistance program costs are increasing at twice the rate of revenue growth and inflation.⁴³ This partly has to do with an increasingly unstable workforce built on a precarious labour market.⁴⁴ The program design of OW and ODSP has created a cycle of dependency causing people to remain in poverty.

ONTARIO BASIC INCOME PILOT PROGRAM

The former provincial Liberal government in Ontario recognized that there is a need for a differently structured social assistance model that would better serve citizens and enable them to escape poverty. With this in mind, the government decided to break away from ‘path dependency’ to test the concept of a universal BI in Ontario pilot.⁴⁵

The Ontario BI pilot intended to investigate whether a BI will reduce poverty more effectively, encourage work, reduce stigmatization, improve housing arrangements,

⁴² Munir A. Sheikh, “Report of the Commission For the Review of Social Assistance in Ontario: Taking Stock Two Years Later,” Accessed July 29, 2018 <https://www.policyschool.ca/wp-content/uploads/2016/03/ontario-committee-review-sheikh.pdf> 2

⁴³ *Ibid* at 1

⁴⁴ R Wilton, “Working at the margins: Disabled people and the growth of precarious employment” in *Critical Disability Theory: Essays In Philosophy, Politics, Policy & Law*, edited by D. Pothier & R. Devlin, 130-150 (Vancouver: UBC Press, 2006.)

⁴⁵ ‘Path dependency’ is a term used in social and economic policy to reflect the tendency of most governments to pursue policy changes along the same path, over long periods of time. Hugh Segal, “An Executive Summary,” *Finding A Better Way - An Income Pilot Project for Ontario - A discussion paper with Hugh D Segal*,” 22-23

produce better health outcomes, create better life chances for recipients and change perceptions of citizenship and inclusion.⁴⁶ The pilot was designed to test if BI, rather than OW or ODSP, improves recipients' "labour market/work behaviours, health and educational outcomes, food security, mobility and housing, and net economic and community outcomes."⁴⁷ The pilot was also expected to take into consideration the impact of other provincial "initiatives to reduce poverty, such as the Ontario Child Benefit (OCB), increases in the minimum wage, and constructive changes to student financial aid assistance."⁴⁸ The Ontario BI pilot study was scheduled to operate for three years in Hamilton, Thunder Bay and Lindsay.⁴⁹ The cost of the program was projected to be \$150 million to provide a BI to 4000 people.⁵⁰

Under the Ontario pilot study, a single person enrolled in the Ontario BI pilot would receive an income of \$16,989. Couples were eligible for \$24,027. Recipients were able to keep any additional child benefits, dental and pharmaceutical access and disability supports to which they are already entitled.⁵¹ A person with a disability would receive an additional disability supplement of \$6000 a year (\$500 per month) for a total income of \$22,989 a year.⁵²

⁴⁶ *Ibid* at 7-8

⁴⁷ *Ibid* at 1

⁴⁸ *Ibid*

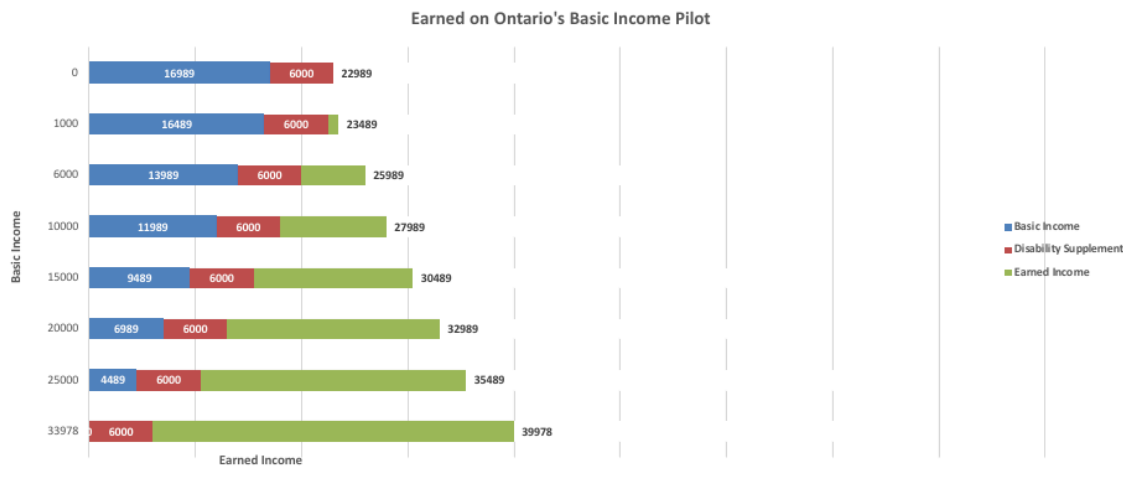
⁴⁹ "Ontario to roll out basic income in three cities," *The Globe and Mail*. August 7, 2018, <https://www.theglobeandmail.com/news/national/what-is-basic-income-and-who-qualifies/article34795127/>

⁵⁰ *Ibid*

⁵¹ Laurie Monsebraaten, "Ontario's Soaring Poverty Gap 'Starkest' For Single Adults As Welfare Rates Stagnate," *The Toronto Star*. May 9, 2016. www.thestar.com

⁵² Hugh Segal, "Finding A Better Way: An Income Pilot Project for Ontario"

Under the pilot, recipients would be able to earn additional income without forfeiting their BI from the program. Because the BI only brings recipients up to the poverty line, it was designed to provide an incentive to earn more through work. Allowances would be reduced by 50% of any additional income earned by the recipient. For example, if a single person, without impairment, earned \$10,000 from a job, “the government would provide \$11,989 in BI – the maximum \$16,989 minus \$5,000 from his or her wages. That recipient would then have a total income of \$21,989 for the year.”⁵³



In June 2018, the Progressive Conservative Party of Ontario was elected. Surprisingly, one of their first announcements was to cancel the Ontario BI pilot program. The

⁵³ “Ontario to roll out basic income in three cities,” *The Globe and Mail*. August 7, 2018. <https://www.theglobeandmail.com>

unwillingness of the provincial Conservative government to continue with the pilot is an example of 'path dependency' even though there is ample proof that people receiving ODSP are trapped behind a welfare wall. Invaluable information on human nature and the structure of social assistance would have been collected if the pilot had been allowed to continue. (At least the four thousand people who have lost their stability will be able to drown their sorrows in \$1 beers.)⁵⁴

What's Old Is New Again: This is not the first time that people have tried to disrupt how social assistance is delivered. A BI to eradicate poverty has had the support of some of the most innovative social thinkers including Thomas Malthus, Martin Luther King, and Bill Gates.⁵⁵ One thing these men have all had in common is that they developed ideas which revolutionized and disrupted how our society functioned. A BI could do much the same thing.

⁵⁴ As part of their campaign the Ontario conservative party promised to lower the price of beer to \$1. Nathalie Rosiers Des, "A buck-a-beer: the symbol of Ontario populism." *The Toronto Star*, August 12, 2018. <https://www.thestar.com/opinion/contributors/2018/08/12/a-buck-a-beer-the-symbol-of-ontario-populism.html>

⁵⁵ Annie Lowrey, "Smart Money: Why The World Embrace Universal Basic Income," *The Globe and Mail*. July 13 2018. https://www.theglobeandmail.com/opinion/article-smart-money-why-the-world-should-embrace-universal-basic-income/?utm_source=Shared+Article+Sent+to+User&utm_medium=E-mail:+Newsletters+/-E-Blasts+/-etc.&utm_campaign=Shared+Web+Article+Links

The concept of a BI has been widely discussed both internationally and locally as an alternative to social assistance regimes which have unintentionally created dependency trapping recipients in a cycle of dependency and poverty.⁵⁶

A BI program can take different forms; the most common are a demogrant or a negative income tax. A universal demogrant payment is one in which everyone receives regular payments of a fixed amount of money independent of a person's income or assets. Any income over the fixed amount or earnings from assets would still be taxed.⁵⁷

Alternatively, a negative income tax is a form of BI that more resembles a refundable tax credit. With no income from any source, an individual or family receives the full amount of the credit. "As income increases, the credit declines, proportionately."⁵⁸ This delivery method requires less bureaucracy and administrative overhead. In a way, this delivery model of social assistance has 'no strings attached.' The Ontario pilot was testing this approach in combination with a basic and disability income supplement.⁵⁹

⁵⁶ In the past, pilots or micro guaranteed income programs have taken place in many communities including Finland, India, Brazil, Namibia, USA and Canada. Chandra Pasma, "Basic Income Programs and Pilots," *Basic Income Canada Network*, Accessed July 22 2018.

<http://books.scholarsportal.info/viewdoc.html?id=671556>

⁵⁷ Jurgen De Wispelaere, and Lindsay Stirton, "The Many Faces of Universal Income," *The Political Quarterly Publishing*, 75, no 3. (2004): 266-67

<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-923X.2004.00611.x>

⁵⁸ Evelyn Forget, Dylan Marando, Tonya Surman & Michael Crawford Urban. "Basic Pilot Lessons: How To Design A Basic Income Pilot Project For Ontario. *Mowat Centre*," Accessed July 11 2018

https://mowatcentre.ca/wp-content/uploads/Publications/126_Pilot_Lessons.Pdf 3

⁵⁹ Hugh Segal, "An Executive Summary," *Finding A Better Way - An Income Pilot Project for Ontario - A discussion paper with Hugh D Segal*, 8

The term ‘universal basic income’ can be misleading and is often incorrectly used. Most of the current pilots world-wide are not universal but conditional, therefore a conditional basic income is a more accurate term. Many of the pilots under development today have eligibility requirements, tax-back and claw-back conditions.⁶⁰ A conditional BI program would only be provided to a particular group of people based on predetermined criteria. Unlike a universal BI program, a conditional BI program requires the architects to determine what activities are considered worthwhile and valuable within society.⁶¹ For instance, should different demographic groups receive more, such as seniors or people who stay at home to care for children.

Other Pilot Programs: This is not the first-time BI programs have been proposed. BI programs were in vogue in the 1960s and 1970s. These all failed for a number of reasons.⁶²

In the 1970s, Manitoba attempted a study in two separate communities, Winnipeg and Dauphin. Winnipeg was a controlled study, meaning that people were selected from the larger population of the city. The Dauphin study was a saturated study, meaning that

⁶⁰ Michael Mendelson, Ken Battle, Sherri Torjman and Ernie Lightman. “A Basic Income Plan for Canadians with Severe Disabilities,” 8

⁶¹ Wispelaere, “The Many Faces of Universal Income,” 268

⁶² Pilots have failed in the past because the studies in the past have had too many variables. The New Jersey pilot had 8 different negative income plans with three different tax back rates and 4 different income guarantees: 50%, 75%, 100 & or 125% above the poverty line. [Evelyn Forget, Dylan Marando, Tonya Surman & Michael Crawford Urban. “Basic Pilot Lessons: How To Design A Basic Income Pilot Project For Ontario, 6

everyone experiencing poverty in the small town was invited to participate.⁶³ However, this project was canceled when it went over budget, consequently, the data gathered was not fully interpreted.⁶⁴

In other examples, pilot studies failed because they became politically unpopular as with the Finnish and Ontario pilots. In the case of Ontario, the pilot was cancelled after the Liberal party was defeated by the Conservative Party in the summer of 2018. It is a shame that the Ontario pilot was canceled before the data could be interpreted and the behaviour effects (both positive and negative) of a BI could be properly analyzed and interpreted.

A BI program can only help individuals exit poverty if the programs are long-lasting, sustainable and fiscally responsible. The current political climate in Canada is conflicted. Poverty reduction is a priority for the federal government, while the recently elected provincial Conservative government in Ontario is focusing on decreasing spending on social services. In an effort to protest the recently canceled Ontario pilot, recipients have asked the federal government to step in,⁶⁵ however, it is unlikely that the pilot will be restored.

⁶³ Evelyn Forget, Dylan Marando, Tonya Surman & Michael Crawford Urban. “Basic Pilot Lessons: How To Design A Basic Income Pilot Project For Ontario, 4-5

⁶⁴ *Ibid* at 5

⁶⁵ Bill Curry and Rachel Younglai, “Federal Government urged to save Ontario’s Basic Income Pilot Project”

BASIC INCOME AND RISKS AND REWARDS FOR PEOPLE WITH DISABILITIES

BI practices uniformity in order to achieve equality. Disability by definition is an individual experience; therefore, a uniform payment may not equally benefit all those with disabilities. If Ontario was to ever again adopt a BI program, people with disabilities would need to be given special consideration so that their interests were protected and the principle of equality of outcome upheld. Without such consideration, people with disabilities could be worse off under a BI. There are a number of benefits people with disabilities receive that could be at risk under a BI program.⁶⁶ Canceling these benefits could save the province money, but at the expense of people with disabilities if a BI program is based on a uniform model rather than a needs-based model.⁶⁷

For example, the ODSP could be considered one of the benefits which could be cut to pay for a BI program. During the Ontario pilot, people who were formally on OW and ODSP did not lose their Ontario Drug Benefit (ODB) coverage, but if a similar program was implemented on a larger scale, ODB could be cut or, more likely reduced.⁶⁸ This would

⁶⁶ This form of basic income would be known as the “big bang approach.” It would see all social supports replaced by a BI, including those not specifically related to poverty, such as the Child Care Tax Credit. For example, all the current ODSP special benefits, such as the special diet benefit, could be at risk. Hugh Segal, “Finding a Better Way: A Basic Income Pilot for Ontario,” 9

⁶⁷ AJ Withers & John Clarke, “What Basic Income Means for Disabled People,” *The Bullet E-Bulletin* Accessed July 27, 2018 <https://socialistproject.ca/bullet/1399.ph>

⁶⁸ *Ibid*

disproportionately adversely affect people with disabilities. The additional \$500 per month offered under the BI program may not replace the value of ODB coverage for someone who relies on expensive drug therapy. It is unclear from the available information if the disability supplement would have remained constant or would have been reduced as the personal earnings of a recipient with a disability increased.

If Ontario was to replace its ODSP with a BI program, policies and outcome would need to be designed in a way that recognizes the individuality and uniqueness of impairment and the care needs of the recipient. The policy objective should be to reach equality of outcome not just equal treatment. The reason for this is because no two disabilities are alike, therefore, by definition the support needed varies as do the costs of providing such support. For example, the medical costs for someone with one type of impairment may be significantly less than someone, for example, who requires around-the-clock attendant care.

Lack of Consideration: People with disabilities were not comprehensively addressed in Hugh Segal's report entitled *Finding A Better Way - An Income Pilot Project for Ontario*. He was the architect of the Ontario pilot. This oversight calls into question the consideration that people with disabilities were given when the pilot was designed. The report suggested that the medical needs of people with disabilities would be examined and equated in much the same way as they were under ODSP. This demonstrates that only small steps have been made in the conception of disability in the design of the

Ontario pilot program. Disabilities were still defined by government within the medical model of disability. Nevertheless, a BI with no strings attached could provide an income with less administrative scrutiny and therefore more freedom for the recipient to allocate their income to best meet their personal needs.

An Alternative for People With Severe Disabilities: Michael Mendelson, Ken Battle, Sherri Torjman and Ernie Lightman from the Caledon Institute support the idea of a BI program for people with severe disabilities. As of 2010, there are about 200,000 Canadians with severe disabilities. These authors argue that most people with disabilities can work and, therefore, the rest of the population would not want to support them. For those with severe disabilities, working full time is a challenge in the current workforce. They should have access to a BI program with eligibility modeled after the Canada/Quebec Pension Plan Disability program (CPP-D).⁶⁹ The authors of this report claim that there would have to be “a high fence around the BI program”⁷⁰ to determine eligibility. This means that only people with the most severe impairments would be able to access this program. Although this is not a true BI program, this idea improves on the current model. While it is an enhancement to ODSP, this model does not break down the welfare wall.⁷¹

⁶⁹ Michael Mendelson, Ken Battle, Sherri Torjman and Ernie Lightman, “A Basic Income Plan for Canadians with Severe Disabilities,” 22

⁷⁰ *Ibid* at 18

⁷¹ *Ibid* at 18-19

Disability Tax Credit: Opponents to conditional BI instead suggest improving and expanding additional social assistance programs like ODSP. This may involve increasing tax credits like the Disability Tax Credit.⁷² To do this could mean that recipients will remain defined by the medical model of disability rather than a human rights model, which views social assistance as a human right.

Labour Exodus: One of the objectives of the Ontario pilot was to determine if the skepticism about BI was justified. Cynics believe that if a provincial BI program was implemented tomorrow it could negatively impact the economy by causing a labour exodus. They predict that people who are not willing to work will choose instead to cash a monthly allowance. Women may leave the workforce at a greater degree than men to take care of their children because under a new universal BI, child-care tax benefits would be rolled back and daycare would no longer be subsidized.⁷³ The belief that a BI would cause people to become lazy is based on stereotypes.

Benefits for Entrepreneurs: A BI can allow people who previously did not have access to family wealth or job security to take a risk and invest in a new venture. This can create

⁷² The disability tax credit (DTC) is a non-refundable tax credit used to reduce income tax. It is available for people with a severe and prolonged physical or mental impairment. Sheryl Smolkin. "Do you qualify for the disability tax credit?" Accessed September 29, 2018. https://www.sunlife.ca/ca/Learn+and+Plan/Money/Financial+planning+tips/Do+you+qualify+for+the+disability+tax+credit?vgnLocale=en_CA

⁷³ Evelyn Forget, Dylan Marando, Tonya Surman & Michael Crawford Urban, "Basic Pilot Lessons: How To Design A Basic Income Pilot Project For Ontario" 5

the ‘democratization’ of business start-ups by removing obstacles to accessing capital and increasing the number of people who start their own businesses.⁷⁴ After a little over a year in existence, the Ontario pilot was already creating entrepreneurs. The Segura’s, a couple in Lindsey, Ontario, started a small fresh food business called Fresh Fuel. The ability to spend their income any way they chose allowed them the opportunity to invest in growing their small business.⁷⁵ There was also a reciprocal benefit. The new entrepreneurs saw an increase in sales after the pilot came to Lindsey because more people receiving the BI had the ability to afford fresh food. The BI had the ability to be an “equalizer of opportunity.”⁷⁶

A BI could allow people with disabilities to become more entrepreneurial. Someone who works for themselves can determine what they do and when. The ability to determine when to work and what to do would provide people with episodic disabilities peace of mind which many with this form of impairment do not currently have.

Working While Receiving BI: A potential drawback of a BI for people with disabilities is that employers could become less willing to make workplace accommodations for those with disabilities who choose to work because they are already receiving an income. On the other hand, BI provides a safety net to those who choose not to work. This option

⁷⁴ Daniel Tencer and Emma Paling, “How Basic Income Could Create a Whole New Class of Entrepreneurs,” *Huffington Post*. August 1 2018. https://www.huffingtonpost.ca/2018/07/26/basic-income-good-for-business_a_23490194/

⁷⁵ *Ibid*

⁷⁶ *Ibid*

may be especially appealing to some people with disabilities, especially those individuals who find it challenging to work as a productive member of the workforce.⁷⁷

Financing a Basic Income Program: It would cost \$30 billion to provide all Ontarians a BI.⁷⁸ For all Canadians, a basic income at the poverty line would cost \$76 billion dollars.⁷⁹ In theory, a national BI program in Canada could replace the 33 current income support programs such as CPP, Old Age Security and the Child Tax Benefit and the cost would net out at \$43 billion dollars.⁸⁰ This may make a nationwide BI program unpopular among individuals who currently benefit from tax-credits.

THEORIES OF EQUALITY, SOCIAL JUSTICE AND BASIC INCOME

Equality is a main pillar of the concept of a universal basic income. The idea of treating people equally existed as a philosophical concept long before it was adopted as a political and social norm. Hobbs, Locke, Kant and Rousseau were all Enlightenment thinkers who influenced the concept of social equality and critical theory. Such ideals from the

⁷⁷ Sunny, Taylor. "The Right Not to Work," *Monthly Review*, Accessed July 30 2018.
<https://monthlyreview.org/2004/03/01/the-right-not-to-work-power-and-disability/>

⁷⁸ "What would a guaranteed basic income cost Canada? Just \$43 billion," *Maclean's*. April 17 2018.
<https://www.macleans.ca/politics/ottawa/what-would-a-guaranteed-basic-income-cost-canada-just-43-billion/>

⁷⁹ "What would a guaranteed basic income cost Canada? Just \$43 billion,"

⁸⁰ David Macdonald, "A Policy's Makers Guide to Basic Income," *Canadian Centre for Policy Alternatives*,
<https://www.policyalternatives.ca/publications/reports/policymakers-guide-basic-income>

Enlightenment stimulated modern social movements and revolutions and were taken up in modern constitutions and declarations of human rights.”⁸¹

Formal equality, also known as the equal treatment model, has its roots in ancient philosophy. Plato declared that like cases should be treated alike. The problem with treating all cases alike is that it does not take into consideration social structures which a select few have benefited from, while most others have not. The structures and accompanying rules often are arbitrary, cemented as normative practices because of the longevity of their existence.⁸²

SUBSTANTIVE EQUALITY

Equality, in particular substantive equality, is a fundamental principle of human rights. The principle of substantive equality, more specifically equality of opportunity, requires that actions are taken to remove arbitrary obstacles in an effort to advance access for all citizens. This means “that no distinctions are imposed upon disadvantaged people that, in purpose or effect, withhold or restrict access to opportunities, benefits or protection from the law, or impose burdens, obligations, or disadvantages that are not imposed on others.”⁸³ Substantive equality requires protection from laws, legislation or policies that

⁸¹ “Equality,” Stanford Encyclopedia of Philosophy, Accessed July 29, 2018
<https://plato.stanford.edu/entries/equality/>

⁸² Marcia Rioux, “Values in Disability Policy and Law: Equality,” In *Critical Perspectives on Human Rights and Disability*, edited by Marcia H Rioux, Lee Ann Bassar and Melinda Jones (Boston: Martinus Nijhoff Publishers, 2011) 46

⁸³ “Substantive Equality as an Overarching Value,” *Law Commission of Ontario*. www.lco-cdo.org

“discriminate in either intent or effect.”⁸⁴ “Substantive equality permits differential treatment only where there is a genuine difference”.⁸⁵ The additional \$6000 people with disabilities received on the Ontario pilot is an example of this.⁸⁶ As it relates to equality jurisprudence, the equal opportunity model and/or the principle of substantive equality has inspired the courts and legislation to adopt the duty to accommodate.⁸⁷

TRANSFORMATIVE EQUALITY

While substantive equality advocates for accommodation which can create a fairer environment where people with different needs can succeed, transformative equality, on the other hand, advocates for the removal of obstacles, so that the human rights principles including equality, accessibility, autonomy, inclusion, and participation can be realized.⁸⁸ Substantive equality recognizes differences while transformative equality seeks to dismantle prejudice and stereotypes.⁸⁹ This theory recognizes the “need to change rules and laws in a way that includes different perspectives and not only the dominant or

⁸⁴ Shantona Chaudhury and Nicolas M. Rouleau, “When equality, autonomy and politics collide: Unpacking *Eric v. Lola*,” Accessed July 15 2018. https://papebarristers.com/wp-content/uploads/13_Fall_AJ-pdf.pdf

⁸⁵ *Gosselin v. Québec (Attorney General)*, [2002] 4 SCR 429 at 436

⁸⁶ Hugh Segal, “Finding A Better Way: An Income Pilot Project for Ontario.” *A discussion paper with Hugh D Segal*,

⁸⁷ Ontario Human Rights Commission, “The Duty to Accommodate,” *OHRC*. Accessed July 14 2018. <http://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression/8-duty-accommodate>

⁸⁸ S. Fredman, “Achieving Transformative Equality for Persons with Disabilities: Submission to the CRPD Committee for General Comment No.6 on Article 5 of the UN Convention on the Rights of Persons with Disabilities” 1

⁸⁹ Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties*, (Oxford: Oxford University Press, 2008), 11.

majority's views and experiences.”⁹⁰ Most importantly, the principle of transformative equality supports the placement of positive duties on the state to uphold entitlements.⁹¹

Transformative equality takes substantive equality further by requiring different approaches of ‘the other’ which in this case includes people with disabilities living in poverty.⁹² The inclusion of all citizens can only be realised when we are willing to adapt the rules of the game where justice and transformative equality may demand it.⁹³

Transformative equality not only shines light on, but tries to eliminate barriers people with disabilities face as a result of obstacles caused by impairment, environments or attitudes.⁹⁴

The four dimensions of transformative equality which Sandra Fredman has developed could model a BI program.⁹⁵ Fredman believes that substantive equality should not be collapsed into a single formula such as equality of opportunity or results. Alternatively, she has proposed a four-dimensional approach. She has used a dimensional approach purposefully because it allows for synergies which complement and buttress the four

⁹⁰ J E, Goldschmidt, “New Perspectives on Equality: Towards Transformative Justice through the Disability Convention?”

⁹¹ *Ibid* at 5

⁹² *Ibid*

⁹³ *Ibid*

⁹⁴ *Ibid* at 11

⁹⁵ S. Fredman, “Achieving Transformative Equality for Persons with Disabilities: Submission to the CRPD Committee for General Comment No.6 on Article 5 of the UN Convention on the Rights of Persons with Disabilities” Oxford Human Rights Hub. Retrieved July 13, 2018. <https://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/.../CPRD-Submission-1.pdf>. 5.

dimensions simultaneously, instead of creating principles which are self-contained and independent.⁹⁶ This analytical framework is a more effective method to address the “multifaceted nature of inequality.”⁹⁷ It is a way to “assess and assist in modifying laws, policies and practices to better achieve substantive equality.”⁹⁸ Behind the theory of the dimensions listed below is the belief that the right to equality should be located in the social context, responsive to those who are “disadvantaged, demeaned, excluded or ignored.”⁹⁹ A basic income program would provide a safety net to those in society who have been marginalized, especially people with disabilities, and would be a step towards transformative equality.

The first dimension, *redress disadvantage*, recognizes that some people suffer because of their personal characteristics. Disadvantage often is focussed in groups with particular characteristics, such as people with impairments. This dimension circumvents the legal definition of equality and instead examines why a group with a common identity experience discrimination. This targeted approach to address disadvantage supports the implantation of affirmative action policies.¹⁰⁰ For example, recipients of a BI can use the allowance to redress any disadvantage they experience due to their disability and they can independently choose how to allocate the money.

⁹⁶ S. Fredman, “Substantive Equality Revisited,” *International Journal of Constitutional Law*, Volume 14, Issue 3 (2016): 712–738, <https://doi.org/10.1093/icon/mow043> 712

⁹⁷ *Ibid* at 736

⁹⁸ *Ibid* at 712

⁹⁹ *Ibid* at 712

¹⁰⁰ *Ibid* at 729

Addressing disadvantage also needs to take into consideration how the disadvantage is perpetrated. This involves addressing power structures which may cause some to be more disadvantaged than others. The current design of social assistance in Ontario has resulted in an unequal power relationship. The Ministry of Children, Community and Social Services has the power to regulate the lives of ODSP recipients. According to Fredman “Disadvantage can also be understood as a deprivation of genuine opportunities to pursue one’s own valued choices.”¹⁰¹ The increased autonomy which a BI program could allow for is a step in the right direction to redressing this power imbalance because recipients have a greater opportunity to make their own choices.¹⁰²

The fact that people with disabilities would receive additional funds and benefits like a special diet allowance¹⁰³ exemplifies an attempt to redress disadvantage. The increased income on a BI program would address socio-economic disadvantage. It was reported that some people enrolled in the Ontario pilot were able to return to school to allow them to improve their skills and increase the likelihood that they could be employed at higher income bracket.¹⁰⁴

¹⁰¹ *Ibid* at 730

¹⁰² *Ibid* at 738

¹⁰³ The Special Diet Allowance helps eligible social assistance recipients with the extra costs of a special diet for a medical condition. “Special Diet Allowance.” *Ontario.ca*. Accessed September 30, 2018. https://www.mcscs.gov.on.ca/en/mcss/programs/social/special_diet_apply.aspx

¹⁰⁴ “I may end up homeless again”: Six Ontarians talk about their life before, after and, once again, without basic income,” *The Hamilton Spectator*. Aug 2 2018. <https://www.thestar.com/>

The second dimension, redress *stigma, stereotyping and humiliation*, recognizes the harm caused by prejudice and stereotypes.¹⁰⁵ This dimension is closely connected to the principal of dignity which will be reviewed later on in this essay. This dimension looks at how social constructs of identify or forms of representation can have associate stigmas and stereotypes. For instance, people with disabilities and/or people living in poverty can be victims of stereotypes. Transformative equality allows for the social implication of disability to be addressed without focusing on the impairment.¹⁰⁶ This accommodates for difference without stigmatization.

The third dimension of transformative equality is related to *fostering an environment of participation*. This dimension recognizes that to be human means to be social. People must have the ability to participate in society. Increased participations in one's community was one of the elements under review in the Ontario pilot. The story of the Segura's who founded Fresh Fuel demonstrates how a basic income program can create increased participation in society.¹⁰⁷

Promoting political and social inclusion means that barriers which limit the ability of people with disabilities to be involved in society need to be removed so that they can

¹⁰⁵ S. Fredman, *New Perspectives on Equality: Towards Transformative Justice through the Disability Convention?* 11

¹⁰⁶ S. Fredman, "Substantive Equality Revisited," *International Journal of Constitutional Law*, Volume 14, Issue 3, (2016): 712–738, <https://doi.org/10.1093/icon/mow043> 731

¹⁰⁷ Daniel Tencer and Emma Paling, "How Basic Income Could Create a Whole New Class of Entrepreneurs,"

participate politically and be included within their local cultures.¹⁰⁸ These dimensions need to be considered simultaneously in evaluating whether a program, policy or action advances transformative equality.¹⁰⁹

The last dimension is to *accommodate for difference* which means that there is a need for structural change which would redistribute power and resources and change institutional structures that oppress people with disabilities. For example, the extra \$6000 people with disabilities received during the Ontario pilot accommodated for difference. Structural change can address the need for a systematic overhaul with the goal of achieving transformative equality. A BI program is an example of this dimension, a disrupted innovation which if implemented would completely alter the structure of the delivery of social assistance in Ontario.

This conceptual framework could be used to guarantee that a BI program was developed to benefit people with disabilities. A liveable wage would break the cycle of disadvantage and independence would result in dignity and self-respect. The fact that a BI has no strings attached means that people have the liberty to determine how funds are allocated which would increase feelings of social inclusion.

¹⁰⁸ S Fredman, Transformative Equality: Making the Sustainable Development Goals Work for Women 180

¹⁰⁹ S Fredman, “Achieving Transformative Equality for Persons with Disabilities: Submission to the CRPD Committee for General Comment No.6 on Article 5 of the UN Convention on the Rights of Persons with Disabilities” Oxford Human Rights Hub. Retrieved July 13, 2018. <https://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/.../CPRD-Submission-1.pdf>

The above breakdown of each dimension demonstrates that a BI program incorporating the principles of transformative equality would not view people with impairments as needing to conform to society, but instead would recognize their individuality as part of human diversity and work towards changing social structures to better serve their needs. By “using the recognition dimension of substantive equality, it is possible to address the social implications of disability rather than focusing on the impairment.”¹¹⁰

Accommodation would be based on one’s humanity not their citizenship, economic status, or level of impairment.¹¹¹

EQUALITY OF WELL BEING

Equality of well-being “incorporates the premise that all humans - in spite of their differences deserve to be considered and respected as equal and have the right to participate in the social and economic life of society.”¹¹² This model, similar to transformative equality suggests that even people who do not contribute to the economy or society have a right to equality¹¹³ and challenges the notion of ‘worthiness’ under the current welfare model. Unlike the other models, equality of well-being would take into

¹¹⁰ S. Fredman, “Substantive Equality Revisited,”

¹¹¹ *Ibid*

¹¹² Marcia Rioux, “Towards a Concept of Equality of Well-Being: Overcoming the Social and Legal Construction of Inequality,” *Canadian Journal of Law and Jurisprudence* Vol. VII, No.1 (1994): 142 <https://www.cambridge.org/core/journals/canadian-journal-of-law-and-jurisprudence/article/towards-a-concept-of-equality-of-wellbeing-overcoming-the-social-and-legal-construction-of-inequality/AE3BDBD9BFDCE6F2D2060BFDDA00D00A>

¹¹³ *Ibid* at 143

account that the level of participation may vary from person to person. In effect, difference would be accepted and accommodated.

According to Rioux and Riddle, equality of outcome or results is considered an expanded version of substantive equality. In order to make a real difference to people's well-being through a commitment to equal respect and dignity, humanness and autonomy, it is necessary to move beyond 'formal legalism' where a society which embraces equality of outcome recognizes "the fallacy of the assumption that existing distributions of power and wealth are products of individual initiative rather than state action."¹¹⁴ What this means is that it is the state and its governing structures which provide the environment for citizens to thrive. The reason that some citizens are able to be more prosperous than others is because they are able to exercise more power and privilege. This power and privilege often come from society's value judgements.¹¹⁵ If a community were to implement a BI program, it would demonstrate that the society values a culture without poverty.

The theory of equality of well-being supports resource distribution and distributive justice which would advance a social agenda such as a BI with the goal of enhancing equality.¹¹⁶

¹¹⁴ Rioux, "Values in Disability Policy and Law: Equality," 49

¹¹⁵ For example, some people who work in certain industries earn more than others because their contributions are considered more important to the country's economy and culture therefore there is a perceived higher value. Benefits of privilege can also be bestowed on someone, or not bestowed, because of their gender or race as well as other characteristics.

¹¹⁶ Rioux, Towards a Concept of Equality of Well-Being: Overcoming the Social and Legal Construction of Inequality 127

For example, unlike equality of opportunity which is fashioned according to neoliberal ideals, equality of well-being guarantees that an individual's citizenship rights are "independent of their economic and social contribution."¹¹⁷ Equality of opportunity values individuals' economic contribution above all, while equality of well-being shifts away from economic contribution as the main factor of entitlement instead focusing on distributive justice. Championing equality of well-being would mean that social institutions, policies and law would promote citizen's well-being over the economic prosperity of some.

A universal BI supports the principle of equality of outcome because it supports an equal distribution of power and resources.¹¹⁸ Universal BI and equality of outcome support the idea that all people should possess the basic necessities to live their life with dignity and respect. The current social assistance model in Ontario does not provide this dignity to millions living in poverty, but if everyone was provided the resources they need to live then all people, regardless of their ability or the circumstances of their birth, could contribute to society.

Examples of the equality of outcome in action would be a universal BI, universal public education and universal health care.¹¹⁹ Policies that are designed from a equality of

¹¹⁷ *Ibid* at 143

¹¹⁸ Rioux, "Values in Disability Policy and Law: Equality," 49-50

¹¹⁹ *Ibid* at 51

outcome approach would consider what the role of the state is in relation to the role of citizens, how resources and power and authority should be redistributed to produce a result where citizens have access to similar outcomes because resources which directly impact the welfare of citizens are administered by the state to benefit the whole of society. “Equality requires distributive justice”¹²⁰ and equality of outcome recognizes that society’s cultural norms, structures and ideas of success and influence are socially constructed, similar to disability itself. As a result, society has placed very real barriers, preventing people with disabilities from beating the odds and succeeding.

The removal of some barriers, for example increasing the accessibility of the built environment, only addresses the result of systematic discrimination, not the hegemony of the dominant social agenda.¹²¹ The objective of a universal BI and, subsequently, equality of outcome, is “not to redistribute income, instead its goal is to provide a common, minimum standard of living for all.”¹²²

An example of a violation of equality of outcome could be if the disability benefit decreased as income increases. This theory recognizes that some people need to be provided more support and/or resources to reach the same outcome as others who are not challenged by socially constructed obstacles. For example, the additional \$6000 for

¹²⁰ *Ibid* at 53

¹²¹ *Ibid* at 51

¹²² Annie Lowrey, “Smart Money: Why the World Should Embrace Universal Basic Income,”

people with disabilities could cover medical or rehabilitation costs not covered under ODSP.

DIGNITY AND HUMAN RIGHTS PRINCIPLES

A life without poverty is a life with dignity. The right to equality and a dignified life is considered either by law or by practice to an entitlement of those living in Canada. A BI program would provide people with disabilities a higher standard of living which would recognize their inherent worth while respecting their rights as citizens. Legal cases described later in this paper will demonstrate how the courts or tribunals have attempted to define equality and human dignity in order to remedy how some people are unfairly impacted by normative social structures and policies. The design of these policies maintains unequal power relationships which exemplify structural violence and indignity.¹²³

It can be argued that the current social assistance policies and practices, which impact and define the daily lives of disabled people living in Canada today, do not uphold the principles of human dignity. Respect for inherent dignity, individual autonomy, including

¹²³ In order to receive ODSP recipients are required to situate themselves within the medical definition of disability. Perspective recipients are required to demonstrate that they have a “substantial physical or mental impairment.” They may also submit to intrusive surveillance and monitoring by the state. “Social assistance policy in Ontario typically reinforces dichotomized understandings of dis/ability, sick/well.” People are classified this way to determine if they are employable or not, therefore, worthy or not. Employment and able-bodiedness has become a pre-requisite for citizenship. T. Smith-Carrier, D. Kerr, J. Wang, D. Tam, M. Kwok, “Vestiges of the medical model: a critical exploration of the Ontario Disability Support Program in Ontario, Canada,” *Disability & Society* 32, 10. (2017): 1572

the freedom to make one's own choices, are principles which have not influenced the design, administration and execution of social assistance programs but could influence the design of a BI. Connections between the concept of human dignity and a BI can be drawn and showcase how a BI scheme embraces these principles. Human dignity reinforces the concept that all people, even people with disabilities, are rights holders. Both the foundational principles of BI and human dignity recognize that society as a whole should take the necessary steps to require that all human beings are "empowered to enjoy the benefits of society on an equal basis."¹²⁴

The *CRPD* extends the protection and entitlement of human rights and dignity to people with disabilities. The *CRPD* codified the principles under which people with disabilities are entitled to be treated but the Convention failed to clearly lay out how human dignity, equality, inclusion and autonomy should be applied and practiced within the countries that have ratified it.¹²⁵ In 2010, Canada ratified the convention; then, in November 2017, it was announced that Canada would table legislation which would increase Canada's commitment to the *CRPD* by ratifying the Optional Protocol. The Optional Protocol would allow people the ability to make a complaint to the United Nations if they thought their rights under the *CRPD* had been violated.¹²⁶

¹²⁴ Lee Ann Basser, "Human Dignity." In *Critical Perspectives on Human Rights and Disability*, edited by Marcia H Rioux, Lee Ann Basser and Melinda Jones, 17-36. Boston: Martinus Nijhoff Publishers, 2011, 22

¹²⁵ Marcia Rioux, "Values in Disability Policy and Law: Equality," 53

¹²⁶ "The Government of Canada tables the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities," *Government of Canada*. Accessed July 29, 2018. <https://www.canada.ca/en/employment-social-development/news>

The right to inclusion is a foundational principle of the *CRPD*. Without recognizing the need for an inclusive society, people with disabilities and other minorities are more likely to face discrimination. “The principle of inclusion is simple - it is the opposite of exclusion and also of alienation... Inclusion means that all people are entitled to full membership in the human family.”¹²⁷ According to this definition, inclusion acknowledges people with disabilities and recognizes that society has to make changes to enable people with disabilities to be fully embraced. Ultimately, inclusion “depends on the acceptance of difference and the willingness to celebrate difference and diversity.”¹²⁸

A BI program would affirm Article 28 of the *CRPD*: Adequate standard of living and social protection. Article 28 recognizes:

the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.¹²⁹

¹²⁷ Melinda Jones, “Inclusion, Social Incision and Participation” in *Critical Perspectives on Human Rights and Disability*, edited by Marcia H Rioux, Lee Ann Bassar and Melinda Jones (Boston: Martinus Nijhoff Publishers, 2011) 57

¹²⁸ *Ibid*

¹²⁹ “Article 28 – Adequate standard of living and social protection,” *UN: Department of Economic and Social Affairs*, Accessed July 22 2018. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-28-adequate-standard-of-living-and-social-protection.html>

Both this Article and the philosophy of BI support the idea that all people within a society should have an adequate standard of living which affords them a life of dignity, where they can participate fully.

Critical Theory: Critical theory and critical legal theory would support a BI program because such a program would disrupt the status quo by providing an alternative method of social assistance delivery. Critical theory can help to clarify conditions of oppression by opening avenues of resistance, such as critical disability studies, to objectively refashion liberal ideas.¹³⁰ Critical disability studies will continue the fight for equality because critical theorists are not “merely concerned with how things are but how they should be.”¹³¹

Critical legal studies try to unpack reasons for historic oppression within a predominantly ableist world which has created norms, practices, and policies to which people with disabilities must conform. Critical legal studies examine this binary power relationship, focusing on how it exists within law and legislation. Critical legal studies “challenges and overturns accepted norms and standards in legal theory and practice.”¹³² It is the belief of critical legal scholars that “law(s) grow out of the power relationships of the society”¹³³

¹³⁰Stephen Eric Bronner, *Critical Theory: A Very Short Introduction* (Oxford: Oxford University Press, 2011), 8

¹³¹*Ibid* at 1-2

¹³² “Critical Legal Theory,” Cornell Law School. Accessed July 27, 2018

https://www.law.cornell.edu/wex/critical_legal_theory

¹³³ *Ibid*

meaning that laws have been created to support a particular collection of beliefs, and legal judgements, and case law further maintains and legitimizes these interests.

There are many examples of legal judgements that do not value social and economic rights either under national or international law, and demonstrate what many critical legal theorists believe to suggest that “the wealthy and the powerful use the law as an instrument for oppression in order to maintain their place in hierarchy.”¹³⁴ Such practices could be overturned if positive and social and economic rights and commitments were recognized. The current social assistance model is based on maintaining the neoliberal status quo.

Critical legal scholars point out the way in which established norms, standards and practices, such as social programs like ODSP, are causing disadvantage for some.¹³⁵ As a result, they are questioning what should be the objective of laws and justice.¹³⁶ For example, on the outcome of *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, [2018] SCC 31[*Matson Andrews*], Chief Commissioner Marie-Claude Landry of the Canadian Human Rights Commission expressed her frustration and

¹³⁴ *Ibid*

¹³⁵ Arlene S. Kanter, “The Law: What's Disability Studies Got to Do With It or an Introduction to Disability Legal Studies,” *Columbia Human Rights Law Review*, Vol. 42, Issue 2 (Winter 2011): 440

¹³⁶ *Ibid* at 442

displeasure with the tribunal's decision when she said "This is especially troubling in cases like these, where the discrimination at issue comes from the laws of our land."¹³⁷

STRUCTURAL VIOLENCE AND ODSP

'Structural Violence' is a theory first developed by Johan Galtung in *Violence, Peace and Peace Research*. Structural violence is defined as persistent offensives to human dignity including poverty, discrimination, and unequal access to education, employment and housing despite the state's economic prosperity.¹³⁸ It is a valuable lens to look at how established economic and government structures are violent to vulnerable groups, such as people living in poverty and/or those with disabilities. With actual violence, a person may be directly harmed.¹³⁹ Structural violence may not directly harm a person; instead the violence "is built into the structure and shows up as unequal power and consequently, unequal life chances."¹⁴⁰ An example of structural violence could be extremely uneven distributions of income or access to health care.¹⁴¹ For instance, structural violence is being committed if some people in a country have access to preventative health care, but others do not. Their inability to access health care may be because of lack of income, geography or the built environment, but nevertheless, there is violence because someone

¹³⁷"News release - Supreme Court Ruling a disappointing setback for human rights justice in Canada: CHRC," CHRC Accessed July 27, 2018, <https://chrc-ccdp.gc.ca/eng/content/news-release-supreme-court-ruling-disappointing-setback-human-rights-justice-canada-chrc>

¹³⁸ Marcia Rioux, and Bonita Heath, "Human Rights in Context." In *Disabling Barriers Enabling Environments*. Edited by John Swain, (London: Sage, 2014), 321.

¹³⁹ Greene, "Before and After Michael Brown—Toward an End to Structural and Actual Violence," 22 https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1893&context=law_journal_law_policy

¹⁴⁰ Greene, "Before and After Michael Brown—Toward an End to Structural and Actual Violence," 22.

¹⁴¹ *Ibid* at 22

has been harmed by the structures in place. This action or inaction is violent because it is avoidable if other measures were in place.¹⁴²

Structural violence is embedded in political and economic organization.¹⁴³ Structural violence is political because elected governments arbitrarily determine how much money will be spent, for example, on social services to support people living in poverty. It is economic because the economic values and practices, for example austerity, dictate where available funds will be designated by the political parties. These decisions are not only determined by a country's economy, GDP, GDP per capita and economic growth etc., but by whom and what is valued within society. Acts of structural violence against people with disabilities, especially those living in poverty, demonstrate "symptoms of deeper pathologies of power and are linked intimately to the social conditions that so often determine who will suffer abuse and who will be shielded from harm."¹⁴⁴

A universal BI would address the structural violence and resulting harm imposed by political and economic decisions based on the universality of the economic support it provides. Everyone is deemed worthy. People with disabilities are often victims of structural violence because of a lack of accessibility, the built environment, or their impairment. Their impairment may be defined within the medical model of disability

¹⁴² *Ibid* at 22

¹⁴³ *Ibid* at 20

¹⁴⁴ *Ibid*

rather than the social model or human rights model of disability. For example, ODSP's eligibility requirements determine who is worthy of support and who is not and are based on a value system placed on different forms of impairments. A BI model would remove this categorization which only sees impairment and instead place value on picturing the whole person.

STRUCTURAL VIOLENCE IN THE COURTS

It is also possible to look to the courts to find examples of structural violence. One reason the Supreme Court did not find in favour of the claimants in *Gosselin v Québec (Attorney General)*, [2002] 4 SCR 429 [*Gosselin*] was because of pre-conceived notions about poverty. In the lower court case, Judge Reeves ruled that poverty was not the result of external structural economic factors but the 'intrinsic nature' of the individual living in poverty.¹⁴⁵ The Supreme Court of Canada ruling in *Gosselin* then goes on to inform subsequent rulings and, as result, the failure to recognize the true cause of poverty became embedded in legal structures thus making it more and more challenging for cases dealing with the issue of poverty to triumph within the Canadian court system.

¹⁴⁵ Martha Jackson, "Constitutional Contact with the Disparities in the World: Poverty as a Prohibited Ground of Discrimination under the Canadian Charter and Human Rights Law," *Review of Constitutional Studies*. Vol 2, no 1 (1994): 76-121

MATSON ANDREWS AND STRUCTURAL VIOLENCE

Similarities can be drawn between Aboriginal Canadians and people with disabilities receiving support from the state. The entitlements and resources these two groups receive are a result of how they are defined; i.e. ‘Indian’ or ‘non-Indian’, impaired or not impaired. The government has the ability through policy choices to influence how these two groups function within society. Much like the ODSP, the *Indian Act* can impact, to a degree, how aboriginal people live their lives.

For example, the *Matson/Andrews* legal challenge is a good illustration of structural violence within the courts. In the fifties, if an Aboriginal woman married a non-status person, she and her children would lose their ‘Indian Status’. The Matson and Andrews families were descendants from an Aboriginal family but were denied Indian status under the Act on this basis. They challenged the Canadian Indian Act through a Human Rights Tribunal¹⁴⁶ claiming that the statute was discriminatory because it was sexist. They hoped to regain their Indian status and have their benefits under the Act re-instated.¹⁴⁷

¹⁴⁶ “Backgrounder - Supreme Court to hear Canadian Human Rights Commission’s arguments tomorrow in historic human rights case,” Accessed August 12, 2018. <https://www.chrc-ccdp.gc.ca/eng/content/backgrounder-supreme-court-hear-canadian-human-rights-commissions-arguments-tomorrow>

¹⁴⁷ *Ibid*

In June 2018, the Tribunal found that it did not have the legal authority to hear these complaints because they were challenges to the Indian Act (R.S.C., 1985, c. I-5) [*Indian Act*] itself rather than challenges to the provision of registration services.¹⁴⁸ The tribunal instructed the complainants that they should have brought a Section 15 Charter challenge, not to a Human Rights Tribunal. The Supreme Court of Canada agreed with this decision.¹⁴⁹

Matson Andrews demonstrated how challenging it is for vulnerable groups to achieve justice and to remedy discrimination. This decision, in June 2018, revealed that the triumphs of *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] SCC 14 [*Tranchemontagne*] have been short lived. In 2006, *Tranchemontagne* showcased how the Tribunal could and should be a more accessible route for justice because tribunals are less costly and not as complicated to navigate in comparison to *Charter* cases.¹⁵⁰ Consequently, the recent *Matson Andrews* decision has disappointed many, including disability rights supporters.

¹⁴⁸ *Ibid*

¹⁴⁹ “Supreme Court ruling a disappointing setback for human rights justice in Canada: CHRC” *Canadian Human Rights Commission*. Accessed September 30. <https://www.newswire.ca/news-releases/supreme-court-ruling-a-disappointing-setback-for-human-rights-justice-in-canada-chrc-685572341.html>

¹⁵⁰ This is an interesting case because it was litigated in both the Supreme Court of Canada and under the Ontario Human Rights Code in an administrative tribunal court. This case is an example of the usefulness of administrative tribunals rather than the Supreme Court to effectively litigate cases involving disability, discrimination and equality rights. The subject under debate was jurisdiction. The Supreme Court held that the Social Benefits Tribunal has jurisdiction to entertain a challenge to legislation (the ODSPA) under the Code. As a result the issue was sent back to the Social Benefits Tribunal (SBT), an administrative tribunal which hears ODSPA appeals, to determine the issue. Historically, “tribunals have proven to be “friendly to claimants” because not only is the analytical framework for demonstrating discrimination simple, challenges can also be less expensive and faster, while the remedy is similar,” which is why this route was originally chosen. “Tranchemontagne — Statutory Challenges to Statutory Enactments: What is

Like other minority groups, the people of Aboriginal descent in *Matson Andrews*, did not have the ability and power to challenge what had already been established because of rules the authorities have in place. The *Indian Act* exemplifies colonial structural violence, where one group has authority and power over another weaker group and affects their ability to access justice and self-determination. In 2011, Bill C-3 remedied the status of Aboriginal women, but children of women who had lost their status prior to the law being changed were still discriminated against and an entire generation of aboriginal dependents were arguably harmed.¹⁵¹

CANADIAN JURISPRUDENCE AND BASIC INCOME

There are a number of other important legal cases in Canada that have implications for the adoption of a BI for people with disabilities. These cases reflect the evolution of the understanding of equality and human dignity within Canadian jurisprudence and how these same legal principles could support and uphold the right to a BI and compel the state to provide a BI for those with a disability.

Under section 7 and section 15 of the *Charter*, all people living in Canada are guaranteed the right to life, liberty and security, and the right to be considered equal under the law

the Appropriate Standard?" *The court.ca*, Accessed August 1 2018, <http://www.thecourt.ca/tranchemontagne-an-unclear-standard-for-statutory-challenges/>
¹⁵¹ "Structural Violence towards Aboriginal Women," *Aboriginals Movements*, Accessed July 23 2018. <https://aboriginalsocialmovements.wordpress.com/2012/03/26/structural-violence/>

without discrimination including discrimination based on mental or physical disability.

Section 12 protects an individual's freedom from cruel and unusual punishment in

Canada.¹⁵² The question that often arises is the extent to which the state has an obligation to enforce these rights. Recent case law demonstrates that equality jurisprudence recognizes mostly negative *Charter* rights and the state's obligation to act has not been upheld.

The Supreme Court of Canada has a history of finding that the *Charter* is bound to the concept of human dignity, despite the fact that the word dignity is not mentioned in the *Charter*.¹⁵³ In 1986, in *R v Oakes*, [1986] 1 SCR 103 [*R v Oakes*] the Supreme Court held that “the values and principles essential to a free and democratic society include respect for the inherent dignity of the human person, commitment to social justice and equality.”¹⁵⁴

Law v Canada (Minister of Employment and Immigration), [1999] 1 SCR 497 [*Law v Canada*] was the first case in which the equality section of the Charter was clarified.¹⁵⁵

Prior to the *Law* case there had been no consensus from the Court on what the state's

¹⁵² *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

¹⁵³ Mark Penninga, *Building on Sand: Human Dignity in Canadian Law and Society*. (BC: ARPA, 1981), 9

¹⁵⁴ *R. v. Oakes*, 1986 CanLII 46 (SCC) at para 64.

¹⁵⁵ In *Law*, the applicant, Nancy Law, was denied CPP survivor benefits. She was not entitled to collect CPP benefits until age 65. She argued her section 15 Charter rights had been violated and she was discriminated against because of her age. *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497

responsibility was to uphold substantive equality. The purpose of section 15 outlined in the judgement was meant to:

prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration.¹⁵⁶

With this interpretation, section 15 is no longer just about ensuring equality. It is now also about protecting human dignity. Justice Iacobucci provided a definition for human dignity in his *Law v Canada* judgment, stating that

Human dignity means that an individual or group feels self-respect and self-worth... Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society. Human dignity within the meaning of the equality guarantee does not relate to the status or position of an individual in society per se, but rather concerns the manner in which a person legitimately feels when confronted with a particular law.¹⁵⁷

To determine if a violation has taken place, in particular, if a government action or inaction violates someone's equality rights, a legal test, called the Law Test, was applied which determined if a particular piece of legislation had violated someone's human dignity. This legal test, which had a human dignity component, demonstrated the application of substantive equality within the Canadian court system.¹⁵⁸ *R v Kapp*, [2008]

¹⁵⁶ *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 at 529

¹⁵⁷ *Ibid* at 530

¹⁵⁸ Three questions were formed:

- 1) If the claimant has been disadvantaged by government action, relative to other individuals
- 2) Whether that disadvantage was because of discrimination
- 3) If another person in the same position would perceive this disadvantage by the government as a violation of their dignity. *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497

2 SCR 483 [*R v Kapp*] however, saw a return to *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 [*Andrews*] because human dignity “is an abstract and subjective notion”¹⁵⁹ which is challenging to prove in a court of law.

By applying this same test, social programs such as the ODSP may be considered discriminatory.¹⁶⁰ For example, the design of the program makes it nearly impossible for people with disabilities to earn enough money to exit the program. The extremely low allowance rates perpetuate poverty and are an assault on human dignity; therefore, it could be argued that ODSP fails the test for equality discrimination. (While this argument may win in the court of logic, it has yet to be upheld in a court of law because of the subjective nature and abstract notion of human dignity.) Using this same logic, the courts’ understanding of human dignity could be applied to build the case for a universal BI program.

The equality test was first developed in *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 [*Andrews*] and refined in 2008 in *R v Kapp*, [2008] 2 SCR 483 [*R v Kapp*] This was the first time when section 15 of the *Charter* was contested. The court had to find a legal test to justify “difference” in a fair and equitable manner. In a society where “difference” is as common as “sameness”, the Canadian legal system needs to find a coherent method for addressing difference, but given the illusive concept, and static nature of disability this has proven to be an exceedingly challenging task. A two-step test was developed:

- (1) Does the law create a distinction based on an enumerated or analogous ground?
- (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?

“Law v Canada (Minister of Employment and Immigration.)” *Case in Brief*
[http://casebrief.wikia.com/wiki/Law_v_Canada_\(Minister_of_Employment_and_Immigration\)](http://casebrief.wikia.com/wiki/Law_v_Canada_(Minister_of_Employment_and_Immigration))

¹⁵⁹ *R v Kapp*, [2008] 2 SCR 483 [*R v Kapp*] at 504

¹⁶⁰ In 2008, the ‘Law Test’ was disputed. In *R v Kapp*, [2008] 2 SCR 48, the ‘Law Test’ was replaced. Instead, Justices referred to a previous case, *Andrews v Law Society of British Columbia* [1989] 1 SCR 143.

GOSSELIN v QUÉBEC (ATTORNEY GENERAL)

In 2002, *Gosselin v Québec (Attorney General)*, [2002] 4 SCR 429 [Gosselin] made its way to the Supreme Court based on the claim that Quebec's social assistance regulations were discriminatory and thus violated section 7 and section 15 of the Charter. A class action suit was brought forth by social assistance recipients under the age of 30 who received less income than those over 30. The court in a 5-4 split determined that the age limitation did not violate section 15 because an age requirement did not discriminate or deny substantive equality. Furthermore, section 7 was only interpreted as a negative right. The circumstances of the case did "not warrant a novel application of section 7 as the basis for a positive state obligation to guarantee adequate living standards."¹⁶¹

This case raises the question of whether the state is under an obligation to provide basic means of subsistence to those who can provide for themselves. The extremely low allowance provided by the government to people under 30 on social assistance failed to respect them as full people and, therefore, infringed on their dignity.¹⁶² The cost of living is the same regardless of whether the person is under or over 30. According to the Court, what infringed the appellant's section 15 rights is "the fact that she was placed in a position that the government itself admits is a precarious and unlivable one. The

¹⁶¹ M Butler, "Background Paper: Section 15 of the *Canadian Charter of Rights and Freedoms* : The Development of the Supreme Court of Canada's Approach to Equality Rights Under the Charter" Accessed July 22 2018. <https://lop.parl.ca/Content/LOP/ResearchPublications/2013-83-e.pdf>

¹⁶² *Gosselin v Québec (Attorney General)*, [2002] 4 SCR 429 at 485 [Gosselin]

distinction in treatment was made simply on the basis of age, not of need, opportunity or personal circumstances, and was not respectful of the basic human dignity of welfare recipients under the age of 30.”¹⁶³ The respondent failed to demonstrate that the provision in question (29(a) of the Regulation) constituted a means of achieving the legislative objective that was reasonably minimally impairing the appellant’s equality rights.¹⁶⁴

In Justice Arbour’s dissenting opinion, she found that the section 29(a) of the Regulation infringed section 7 of the Charter which imposed a positive obligation on the state to offer basic protection for the life, liberty and security of its citizens. She found that “The right to a minimum level of social assistance is intimately intertwined with considerations related to one’s basic health and, at the limit, even one’s survival. These rights can be accommodated under s 7.”¹⁶⁵

Four of the nine judges held that section 7 of the Charter did require the state to provide basic protection and had the judgement gone the other way, this would have imposed on the state a duty to act. The significance of this narrow margin should be recognized and respected.

¹⁶³ Yavar Hameed, Niiti Simmonds, “The Charter, Poverty Rights and the Space Between: Exploring Social Movements as a Forum for Advancing Social and Economic Rights in Canada.” *National Journal of Constitutional Law* Vol 23 No 1. (2007): 181

¹⁶⁴ *Ibid*

¹⁶⁵ *Gosselin v Québec (Attorney General)*, [2002] 4 SCR 429 at 442 [*Gosselin*]

Justice Arbour goes on to discuss positive and negative duties, as it relates to the details of the case, pointing out that sometimes a positive interpretation of Charter sections is valid because the Constitution is “a living tree”¹⁶⁶ therefore the courts should not “freeze constitutional interpretation.”¹⁶⁷ This gives us hope that a future case could interpret the Charter with a positive rights approach leading to judicial support for the adoption of BI.

Justice Arbour also wrote:

The courts may be ill-equipped to decide policy matters concerning resource allocation... This case raises the different question of whether the state is under a positive obligation to provide basic means of subsistence to those who cannot provide for themselves. The role of the courts as interpreters of the Charter and guardians of its fundamental freedoms requires them to adjudicate such rights-based claims. These claims can be dealt with here without addressing the question of how much expenditure by the state is necessary in order to secure the right claimed, a question which may not be justiciable.¹⁶⁸

Essentially, this finding supports a more robust social assistance model but asserts that the details, shape and financing of such policies are outside courts’ responsibility. The fact that the constitution is a ‘living tree’ dedicated to upholding fundamental justice is a hopeful indication that future cases dealing with justiciability of social and economic rights may yield a positive interpretation of section 7 (and/or other sections.) This could encourage a more robust social assistance model, such as BI, in the future.

¹⁶⁶ *Ibid* at 491

¹⁶⁷ *Ibid* at 442

¹⁶⁸ *Ibid* at 442-443

CANADIAN DOCTORS FOR REFUGEE CARE V CANADA (ATTORNEY GENERAL)

In *Canadian Doctors for Refugee Care v Canada (Attorney General)*, [2015] 2 FCR 267 [Canadian Doctors for Refugee Care] there was an important decision on July 4, 2014 for those who are members of ‘vulnerable groups’ receiving social services from the state. Justice Anne Mactavish’s decision provides precedent for future cases dealing with the rights of impoverished people¹⁶⁹ and has implications for a BI program in Canada.

In 2012, cuts were made to the Interim Federal Health Program (IFHP) which “provides limited, temporary coverage of health-care benefits to refugees.”¹⁷⁰ Justice Anne Mactavish agreed that the cuts were a violation of section 12 because they were causing illness, disability, and death and she held that these actions violated section 12 and 15 of the *Charter*.¹⁷¹ She wrote that this treatment or punishment was cruel and unusual if it is “so excessive as to outrage [our] standards of decency.”¹⁷² She also held that there was discrimination based on section 15 because people were discriminated against because of their nation of origin.

¹⁶⁹ Audra Ranalli, “Cuts to Refugee Health Care Found Unconstitutional: Canadian Doctors for Refugee Care v Canada.” *TheCourt.ca*. Accessed July 22 2018. <http://www.thecourt.ca/cuts-to-refugee-health-care-found-unconstitutional-canadian-doctors-for-refugee-care-v-canada/>

¹⁷⁰ “Health Care- Refugees,” *Government of Canada*, Accessed August 22, 2018. <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-within-canada/health-care.html>

¹⁷¹ Audra Ranalli, “Cuts to Refugee Health Care Found Unconstitutional: Canadian Doctors for Refugee Care v Canada.”

¹⁷² *Ibid*

In her judgment, she justified her decision by concluding that “the intentional targeting of an admittedly poor, vulnerable and disadvantaged group takes this situation outside the realm of ordinary *Charter* challenges to social benefit programs.”¹⁷³ She went on to state that the cuts “potentially jeopardize the health, and indeed the very lives, of these innocent and vulnerable children in a manner that shocks the conscience and outrages our standards of decency and violate section 12 of the *Charter*.”¹⁷⁴

Justice Mactavish upheld the refugees’ right to publically-funded health care because it was a previous entitlement, which had been cut. However, her judgement did not go far enough to say that all citizens had a positive right to publicly-funded health care under section 12 of the *Charter*.¹⁷⁵

While acknowledging that tensions between *Charter* rights and positive and negative rights has been widely debated,¹⁷⁶ it was Justice Mactavish’s opinion, that in this case the “applicants section 7 claim cannot succeed as it is well-established in Canadian jurisprudence that the *Charter* does not impose positive obligations on governments to provide social benefits programs such as health insurance in order to secure their life,

¹⁷³ *Canadian Doctors for Refugee Care v Canada (Attorney General)*, [2015] 2 FCR 267 at 169 [*Canadian Doctors for Refugee Care v Canada*]

¹⁷⁴ *Ibid* at 170

¹⁷⁵ Audra Ranalli, “Cuts to Refugee Health Care Found Unconstitutional: Canadian Doctors for Refugee Care v Canada,”

¹⁷⁶ Emmett Macfarlane, “The Dilemma of Positive Rights: Access to Health Care and the Canadian Charter of Rights and Freedoms.” *Journal of Canadian Studies*. Vol 48. (2014): 49-788

liberty or security of persons.”¹⁷⁷ However, her decision did recognize recipients’ rights to previously existing services.

This case would be a helpful precedent to protect the rights of former recipients of the Ontario BI pilot program. Over four thousand people had come to depend on a basic income which had been promised for three years. Many had changed their lives and had made financial decisions knowing that they would be receiving a stable income.

Parallels can be drawn between the cuts made to the IFHP and the recently axed Ontario BI pilot. Theoretically, recipients of the Ontario BI pilot could make such a claim citing this case as precedent.

TANUDJAJA V CANADA (ATTORNEY GENERAL)

In *Tanudjaja v Canada (Attorney General)*, [2014] ONCA 852 [Tanudjaja], the appellants sought a declaration that the governments of Canada and Ontario are obliged to implement effective national and provincial strategies to reduce and eventually eliminate homelessness and inadequate housing. Furthermore, the appellants sought a declaration that the failure to implement such strategies violates their rights to life, liberty and security of the person contrary to section 7, and their right to equality contrary to section 15 of the *Charter*.¹⁷⁸

¹⁷⁷ *Canadian Doctors for Refugee Care v Canada (Attorney General)*, [2015] 2 FCR 267 at 127 [Canadian Doctors for Refugee Care v Canada]

¹⁷⁸ “Tanudjaja v. Attorney General (Canada),” *Leaf.ca* Accessed July 26, 2018.
<http://www.leaf.ca/tanudjaja-v-attorney-general-canada/>

The legal question raised in this case was whether the *Charter* requires a positive right interpretation of section 7. The lower court judge said “There is no positive obligation raised by the *Charter* that requires Canada and Ontario to provide for affordable, adequate, accessible housing.”¹⁷⁹ The Court of Appeal, in a 2-1 split decision overturned the decision arguing that no one policy was believed to be in violation of the *Charter*; instead, it was a number of policies which together may have caused homelessness but it was not considered a justiciable issue.¹⁸⁰ The application was found to not be justiciable because an individual law was not challenged. Instead, a multifaceted cast of policies and practices were considered to be the reason for discrimination.¹⁸¹ The majority opinion pointed out that section 7 and 15 *Charter* challenges normally contest a specific law or laws “instead of pointing to a complex matrix of policies and programs as discriminatory, as *Tanudjaja* does.”¹⁸² Justice Gladys Pardu wrote the Court of Appeal’s majority decision. Her opinion, on behalf of the Court, held that if there are constitutional violations caused by a network of government programs such violations could be addressed at another time and another way.¹⁸³

¹⁷⁹ Judy Hemming, “Ontario Court of Appeal Says Housing Rights Case Can’t Proceed: *Tanudjaja v Canada*.” *Thecourt.ca* Accessed July 23 2018. <http://www.thecourt.ca/ontario-court-of-appeal-says-housing-rights-case-cant-proceed-tanudjaja-v-canada/>

¹⁸⁰ *Ibid*

¹⁸¹ *Ibid*

¹⁸² “*Tanudjaja v. Attorney General (Canada)*,”

¹⁸³ In their decision Justice Gladys Pardu, who wrote the Appeal Court’s majority decision, suggests that this “is not to say that constitutional violations caused by a network of government programs can never be addressed, particularly when the issue may otherwise be evasive of review.” Judy Hemming, “Ontario Court of Appeal Says Housing Rights Case Can’t Proceed: *Tanudjaja v Canada*,”

Justice Kathryn N. Feldman, in a dissenting opinion, held that the lower court had not given valid consideration to the section 7 argument. She believed the lower court “erred in stating that the section 7 jurisprudence on whether positive obligations can be imposed on governments to address homelessness is settled.”¹⁸⁴ It was her opinion that the Canadian courts have not yet rendered the final position on whether or not the *Charter* should uphold positive rights. Just because past cases have not upheld a positive rights interpretation of *Charter* rights in their majority decisions does not mean that they cannot, or should not, in the future if the evidence supports such a claim.¹⁸⁵

The case did not proceed to a full hearing and the judgement was only on the matter of whether it was a justiciable issue. On the matter of justice and *Tanudjaja*, Judy Hemming insightfully states that “While it is not the role the court to make policy decisions, it is the role of the court both to uphold justice and to help reflect societal thinking about what justice means.”¹⁸⁶

The outcome of this case is an indication of structural violence at a policy level which has impacted both individuals and the possibility of them receiving a legal remedy. In

¹⁸⁴ Judy Hemming, “Ontario Court of Appeal Says Housing Rights Case Can’t Proceed: *Tanudjaja v Canada*,”

¹⁸⁵ *Tanudjaja v Canada (Attorney General)*, [2014] ONCA 852

¹⁸⁶ Judy Hemming, “Ontario Court of Appeal Says Housing Rights Case Can’t Proceed: *Tanudjaja v Canada*,”

addition, parallels to ODSP can be drawn because this program is also a complex web of policies which are difficult to challenge in the courts. A potential solution to the structural violence caused by the existing network of government programs like ODSP could be to implement a BI program which has proven to have provided more stable housing options¹⁸⁷ and would provide recipients the ability to afford adequate housing and the elimination of homelessness.

MASSE V ONTARIO (MINISTRY OF COMMUNITY & SOCIAL SERVICES)

In the 1990s, the Ontario government was practicing a policy of austerity, and social assistance to single parents was cut by 21.6%, well below the poverty line. Household needs could not be met on the available allowances; consequently, some of those parents challenged the cuts under section 7 and 15 of the *Charter*. Their claim was rejected because the group receives a benefit which others do not; however, one of the expert witnesses had some interesting insights on how to handle poverty in Ontario. In answer to the question how much the rates should be raised to achieve 'adequacy', an expert witness, Professor Ernie Lightman, stated:

If we wanted to eliminate those problems, we have to have a totally new approach towards income maintenance... If we wanted to eliminate those problems we'd need a different kind of society than we have in Ontario today and we'd need a different government than we have today. We would need to

¹⁸⁷ Steve Pelland is an example of one of the Hamilton pilot recipients who was able to afford housing during the Ontario pilot. Now that the pilot has been canceled he will likely end up homeless again. Natalie Paddon, "I may end up homeless again": Six Ontarians talk about their life before, after and, once again, without basic income."

look at things like a guaranteed income. We'd need to really abolish welfare as we know it and replace it with something better.¹⁸⁸

Even though this case was not successful for those receiving social assistance, the opinions expressed in this case support the concept of a BI which would transform society and disrupt current ideas of resource allocation about what should be considered the responsibility of the state to its citizens. Lightman's opinion would support a BI program whose framework was based on the four dimensions of transformative equality and its outcome based on the principles of equality of wellbeing and equality of outcome.

However, Judge J. O'Brien commented that "much economic and social policy is simply beyond the institutional competence of the courts."¹⁸⁹ This argument demonstrates that those seeking justice should recognize that a policy solution needs to be found outside the courts especially when it concerns social and economic rights. If Canada had a social charter then the courts would have the authority "to second guess policy/political decisions"¹⁹⁰ as Judge O'Driscoll stated in his judgment. The majority opinion in this case arguably could support the creation of a BI. This case demonstrates that a BI model would be a more effective method to achieve social justice than the legal route.

¹⁸⁸ *Masse v Ontario (Ministry of Community & Social Services)*, [1996] OJ No. 363 at 6 [*Masse*]

¹⁸⁹ "Domestic implementation of economic and social rights," Accessed July 26, 2018.
<http://www.ohrc.on.ca/en/human-rights-commissions-and-economic-and-social-rights/domestic-implementation-economic-and-social-rights>

¹⁹⁰ *Ibid*

SOCIAL CONDITION AS AN ANALOGOUS GROUND

The *Matson Andrews* and *Tanudjaja* decisions have further complicated the route to justice for impoverished individuals seeking remedy from discrimination. One solution to having economic and social rights protected is to have ‘social condition’ added as a prohibited ground of discrimination under the *Code*.¹⁹¹ If poverty as a social condition was listed within the *Code* then economic, social and cultural rights would be more likely to be enforced. Another route would be to have poverty listed as an analogous ground¹⁹² for discrimination under section 15 of the *Charter* because, as a group, people living in poverty are often victims of discrimination.¹⁹³ Without this legal protection the poor will remain “constitutional castaways.”¹⁹⁴ When the *Charter* was first written it was considered by the court to be “foolhardy to provide an exhaustive list of analogous grounds.”¹⁹⁵ One of the questions asked when the grounds were being determined was who are at risk of being victims of stereotypical decision making, therefore, who deserved section 15 protection.¹⁹⁶ Impoverished people were left out in the cold, yet those living in poverty are often stereotyped.

¹⁹¹ “Human rights commissions and economic and social rights” Accessed July 16 2018 <http://www.ohrc.on.ca/en/book/export/html/2465>

¹⁹² Analogous grounds are “personal characteristic[s] that [are] immutable or changeable only at unacceptable cost to personal identity.” “Phrase of the week - Analogous Grounds,” Accessed August 22, 2018. <https://www.westlawnextcanada.com/blog/insider/phrase-of-the-week-analogous-grounds-257/>

¹⁹³ Jessica Eisen, “On shaky ground: Poverty and Analogous Grounds Under The Charter,” Accessed July 22 2018. [www.povertylaw.ca/uploads/6/7/6/0/.../eisen - on shaky grounds - vol 2 no 2.pd. 1](http://www.povertylaw.ca/uploads/6/7/6/0/.../eisen_-_on_shaky_grounds_-_vol_2_no_2.pd.1)

¹⁹⁴ *Ibid*, 4

¹⁹⁵ *Ibid*, 5-6

¹⁹⁶ *Ibid*, 8

Margot Young connects cases dealing with experiences of poverty, section 15 jurisprudence, and critical legal theory, when she suggests that Justices must “challenge their own ideological comfort zones, to be introspective about their own privilege, to reach beyond their own experiences to attempt comprehension of a litigant’s unfamiliar story, and to look critically at who, at the end of the day, ends up with what.”¹⁹⁷

Justices apply substantive equality in order to recognize the different experiences of people with impairments. The same should be done for people living in poverty. Otherwise, “those living in poverty [will be] turned away at the courthouse door.”¹⁹⁸ It is the opinion of Jessica Eisen, that one of the problems with the current list of analogous grounds under section 15 is that “difference is located within the person... not in the social relationships that construct and enforce difference”¹⁹⁹ With regards to people with disabilities, their impairment makes them different to people who do not have an impairment. If social condition is added as analogous grounds for discrimination, then an element of structural violence will be eliminated. Vulnerable groups will no longer be encumbered by an unequal power relationship between those administering justice and those seeking it.²⁰⁰

¹⁹⁷ *Ibid* 32

¹⁹⁸ *Ibid*

¹⁹⁹ *Ibid*

²⁰⁰ *Ibid*

A BI program could potentially be supported by the courts if social condition was added as analogous grounds for discrimination. By law, welfare programs would be required to enhance the social condition of their recipients. A BI program would be more likely to hold up this ideal than ODSP which is a product of austerity and neoliberalism.

CONCLUSION

‘Disruptive innovation’ is a current buzz word. In 1995, Clayton Christensen and Joseph L. Bower first developed the disruptive innovation model to explain technological innovation.²⁰¹ Inspired by the same principles, catalytic innovation,²⁰² a subset of disruptive innovation, can be applied to encourage social changes which offer “systems changing solutions,”²⁰³ like a BI. A BI could uphold most of the catalytic indicators. A BI would create large scale social change by providing adequate resources to people who would have previously not been cared for. A BI also is disruptive as many, such as Ontario’s Conservative Government, resist the idea and its implementation because they

²⁰¹ Clayton Christensen, Heiner Baumann, Rudy Ruggles and Thomas Sadtler. “Disruptive Innovation For Social Change,” *Harvard Business Review*, Accessed August 16, 2018, <https://hbr.org/2006/12/disruptive-innovation-for-social-change>

²⁰² Catalytic innovators share five qualities:

1. They create systemic social change through scaling and replication.
2. They meet a need that is either overserved (because the existing solution is more complex than many people require) or not served at all.
3. They offer products and services that are simpler and less costly than existing alternatives and may be perceived as having a lower level of performance, but users consider them to be good enough.
4. They generate resources, such as donations, grants, volunteer manpower, or intellectual capital, in ways that are initially unattractive to incumbent competitors.
5. They are often ignored, disparaged, or even encouraged by existing players for whom the business model is unprofitable or otherwise unattractive and who therefore avoid or retreat from the market segment.

²⁰³ Clayton Christensen, Heiner Baumann, Rudy Ruggles and Thomas Sadtler. “Disruptive Innovation For Social Change,”

oppose the risks associated with large scale changes. This lack of disruptive innovation will only preserve the status quo.

This paper has attempted to analyze a BI program for people with disabilities in the context of human rights principles and theories of equality. The four dimensions of transformative equality would support a BI program because it would break the cycle of poverty and welfare dependency caused by OW and ODSP.²⁰⁴ A BI would provide a liveable wage that recognizes human dignity and, the fact that a BI would be provided without any ‘strings attached’, means that the recipients, rather than the state, have the power to allocate their resources where they see fit.²⁰⁵ The independence which BI creates will result in increased social inclusion.

A BI could uphold the concept of equality of outcome. Everyone is provided with similar resources, one person is not left more disadvantaged than another, and based on that logic, arguably all people are capable of reaching the same positive outcome. A BI program which embodies this principle would provide people with disabilities additional support, such as additional funds, in order to guarantee that they reach the same outcome as people who are not disabled.²⁰⁶

²⁰⁴ “Achieving Transformative Equality for Persons with Disabilities: Submission to the CRPD Committee for General Comment No.6 on Article 5 of the UN Convention on the Rights of Persons with Disabilities,”

²⁰⁵ Hugh Segal, “Finding A Better Way - An Income Pilot Project for Ontario - A discussion paper with Hugh D Segal,”

²⁰⁶ Marcia Rioux, “Towards a Concept of Equality of Well-Being: Overcoming the Social and Legal Construction of Inequality,”

Critical theory and critical legal theory are tools which are deployed in this essay to understand and unpack current notions of poverty, worthiness, as well as the state's responsibility to care for its citizens. Understanding the roots of these ideas allows for the freedom to imagine disruptive alternatives for the delivery of social assistance.²⁰⁷

This paper's examination of structural violence has attempted to demonstrate how established government structures like OW and ODSP are violent to marginalized groups such as people with disabilities living in poverty. This MRP has used the concept of structural violence to understand the negative impact of austerity policies which have led to policies like ODSP. People receiving a BI could experience less structural violence than they may experience under the current model of social assistance because a BI program would provide decreased oversight.²⁰⁸

This essay's exploration of a basic income for people with disabilities could lead to additional research to determine the similarities between the centre for independent livings' direct funding model and a basic income. Participants in this program are provided with a monthly income which they use to hire and manage their own attendant carer. The design of this program allows for increased independence and authority to administer their own care. The success of the direct funding model could support a larger

²⁰⁷ "Critical Legal Theory,"

²⁰⁸ Linda Sheryl Greene, "Before and After Michael Brown—Toward an End to Structural and Actual Violence,"

basic income-style program for people with disabilities which encourages increased control over one's life and finances.²⁰⁹

Another area for extended research could be an analysis of how the four dimensions of transformative equality coupled with the articles of the CRPD could inform a national basic income policy which could redress disadvantage and stigma, encourage participation and accommodate for difference.

Finally, further research is required to determine how best to finance a universal BI in a responsible manner which would protect current benefits for people with disabilities. For example, eliminating registered savings plans has been proposed as a way to increase tax revenue that could be used to fund a universal basic income program; however, this would adversely affect people with disabilities who have set up Registered Disability Savings Plans (RDSP), a tax-free savings account with matching grants from the federal government for low income recipients.²¹⁰

There are a number of legal cases that have implications for a BI. In *Gosselin*, for example, the decision raised a number of important arguments both in favour and opposing the imposition on the state of a duty to act to provide adequate social protection such as a BI. Had the decision gone another way we may have had judicial support for a

²⁰⁹ "Direct Funding: Self-Managed Attendant Services in Ontario," Accessed October 15, 2018.

<https://www.dfontario.ca/>

²¹⁰ Richard Pereira, "Universal Basic Income and the Cost Objections: What Are We Waiting For," *World Economic Review*, Issue 5 (July 2015): 5.

BI in Canada. This case held that “the *Charter* was not designed to act as a tool for redistributive justice or protection of people already marginalized by the social and economic barriers that cleave Canadian society.”²¹¹ Therefore an alternative for dealing with the issue of poverty must be sought. This essay pointed towards two possible avenues that, if implemented, could bolster the case for a BI program. The first is activating a BI program for society’s most vulnerable. The second is adding social condition to the *Charter* or *Code* as grounds for discrimination. The route to justice for many Canadians has been difficult because social policy issues have been challenging for the courts to uphold. As of yet, it is only a dissenting opinion that would impose a duty to act on the state to provide social assistance therefore social condition needs to be added as grounds for discrimination so that people with disabilities experiencing poverty have access to justice.

A BI could be a positive disruptive force for people with disabilities to challenge conceptions of worthiness, poverty, and the role of government. By re-ordering the status quo of social assistance delivery, people with disabilities could be provided support from the state which champions human rights and upholds principles of equality and justice.

²¹¹ Yavar Hameed, Niiti Simmonds, “The Charter, Poverty Rights and the Space Between: Exploring Social Movements as a Forum for Advancing Social and Economic Rights in Canada,” 181

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